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Case No: BL-2020-001343

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 14 November 2024

Before :

MR JUSTICE MILES

- -

Between :

(1) LONDON CAPITAL & FINANCE PLC (in administration)
(2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS, COLIN HARDMAN AND GEOFFREY ROWLEY (joint administrators of London Capital & Finance Plc (in administration))
(3) LONDON OIL & GAS LIMITED (in administration)
(4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE BEDNASH (joint administrators of London Oil & Gas Limited (in administration)) — **Claimants**

- and -

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

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Stephen Robins KC, Andrew Shaw & Daniel Judd (instructed by **Mishcon de Reya LLP**) for the **Claimants**
Anumrita Dwarka-Gungabissoon (of **Richard Slade & Partners LLP**) for the **First Defendant**
Roy Ledgister and Owen Curry (instructed by **Kingsley Napley LLP**) for the **Fifth and Sixth Defendants**
The Eighth Defendant appeared in person
The Fourth, Seventh and Ninth Defendants were not represented and did not appear

Hearing dates: 19 - 22, 26 - 29 February 2024; 4 - 7, 11 - 13, 18, 20 - 21, 25 - 27 March 2024; 10 - 11, 15 - 18, 29 - 30 April 2024; 1 - 2, 7 - 8, 13 - 14, 23 May 2024; 10 - 13, 17 - 19 June 2024

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Approved Judgment

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MR JUSTICE MILES

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Mr Justice Miles:

Introduction

1. The First Claimant ("LCF") is in administration. The Second Claimants are the administrators of LCF.

2. LCF raised money from retail investors by selling "mini-bonds". These were debt securities which were typically non-transferrable (so that there was no secondary market). Issuance of mini-bonds was not itself a regulated activity and the marketing materials for them did not require approval by any listing authority.

3. Between 2013 and December 2018 LCF raised a total of over £237 million from about 11,600 bondholders. LCF presented itself to investors as a commercial lender to the SME sector in the United Kingdom. In fact it advanced the money it raised to a small number of connected companies, associated with four individuals, including its CEO. The Claimants contend that these advances were dressed up as commercial loans.

4. One of the borrowers was the Third Claimant ("LOG"), a company incorporated in England and Wales which is now in administration. It borrowed about £122 million from LCF. The Fourth Claimants are the administrators of LOG.

5. The Claimants were represented by Mr Robins KC, Mr Shaw and Mr Judd, instructed by Mishcon de Reya LLP.

6. The First Defendant, Mr Thomson, was at all material times a director of LCF and, for most of its life, its CEO. The Claimants allege that Mr Thomson was also a beneficial owner of various direct and indirect recipients of money from LCF. Mr Thomson admits that he had a 5% beneficial interest in certain such recipients including LPE Support Limited ("LPE Support"), CV Resorts Limited ("CV Resorts"), CV Support Limited ("CV Support"), Waterside Villages plc ("Waterside Villages"), Waterside Support Limited ("Waterside Support"), Costa Property Limited ("Costa Property"), Costa Support Limited ("Costa Support"), Colina Support Limited ("Colina Support"), LOG, London Power Corporation ("LPC") and London Group LLP. Mr Thomson also admits that he was the beneficial owner of a company called London Financial. The nature of his admitted beneficial interest is disputed. Mr Thomson participated fully in the trial. He was represented by Ms. Dwarka-Gungabissoon, a solicitor advocate of Richard Slade & Partners LLP.

7. The Second Defendant, Mr Hume-Kendall, was at all material times a director and a beneficial owner of various direct and indirect recipients of sums from LCF, including LOG and Leisure & Tourism Developments ("L&TD") and companies to which LOG and L&TD lent (or on the Claimants' case purported to lend) money. Mr Hume-Kendall was a director of LCF from 12 July 2012 to 15 August 2013, at a time when the company was dormant and was known (at various times) as Sales Aid Finance (England) Limited or South Eastern Counties Finance Limited ("SAFE"). Mr Hume-Kendall denies he had any involvement with LCF after 15 August 2013. The Claimants settled with Mr Hume-Kendall very early in the trial.

8. The Third Defendant, Mr Barker, was at material times a director and a beneficial owner of various direct and indirect recipients of sums from LCF, including LOG. The Claimants settled with Mr Barker before the trial.

9. The Fourth Defendant, Mr Golding, was at all material times a beneficial owner of various direct and indirect recipients of sums from LCF, including LOG. The Claimants also allege that Mr Golding was at all material times a shadow or de facto director of LCF, which Mr Golding denies. Mr Golding served a Defence, but was debarred from defending the proceedings owing to failures to comply with an unless order requiring him to provide disclosure of documents. He remains a live defendant against whom relief is sought. He did not attend the trial.

10. The Fifth Defendant, Mr Careless, owned and/or controlled the Sixth Defendant ("Surge"), a marketing company engaged by LCF as its sales agent. These defendants ("the Surge Defendants") were represented by Mr Ledgister and Mr Curry, instructed by Kingsley Napley LLP.

11. The Seventh Defendant, Mr Russell-Murphy, assisted SAFE in selling mini-bonds and, after Surge became the marketing agent for LCF, was engaged as a part of the sales team by Surge. He received payments from Surge, as did a company of which he was the sole director and shareholder, the Ninth Defendant ("GP"). The Claimants aver that Mr Russell-Murphy's knowledge is to be attributed to GP and to Surge. Mr Russell-Murphy admits that his knowledge is to be attributed to GP (as does GP) and does not plead to the allegation that it is to be attributed to Surge. Mr Careless and Surge aver that Mr Russell-Murphy was engaged on a consultancy basis and was not an employee of Surge; accordingly, Mr Careless and Surge deny that Mr Russell-Murphy's knowledge in its entirety can or should be attributed to Surge. Mr Russell-Murphy and GP served a Defence and gave disclosure of documents but did not attend the PTR or the trial. They remain live Defendants against whom relief is sought.

12. The Eighth Defendant, Mr Sedgwick, was a solicitor. At various times he was a director and/or company secretary of various companies that were direct and indirect recipients of sums from LCF. He also drafted many of the documents for the transactions under which borrowing companies or their associated companies acquired assets from the individual Defendants (as explained below). He was also the owner and controller of LCF's security trustee, Global Security Trustees ("GST"), until 31 March 2018. He remains a live defendant. He represented himself at the trial.

13. The Tenth Defendant, Mrs Hume-Kendall, is the wife of Mr Hume-Kendall and was the recipient of some sums that derived from LCF and/or LOG. The Claimants brought tracing claims against her, which she denied. The claims were settled early in the trial.

14. There were also claims against the non-executive directors of LOG. These settled well before the trial.

The claims and defences in outline

15. As already stated, LCF raised sums from members of the public through the issuance to them of mini-bonds. LCF issued 16,706 bonds to 11,625 members of the public, who collectively invested a total of over £237 million. LCF told the investors that it would generate returns on sums raised from bondholders by the onward lending of those sums.

16. The Claimants allege that, in order to induce prospective bondholders to invest, LCF made various representations to them, through information memoranda, brochures, telephone calls and/or conversations, including as to LCF's overheads, the use to which LCF would apply funds invested by bondholders, the status of companies to which LCF would lend sums and the security of the investments made by bondholders. Mr Golding accepts in his Defence that he occasionally and informally discussed design matters in relation to LCF's marketing materials, but says he was not otherwise involved with and had no responsibility for the content of those materials. Mr Thomson, Mr Russell-Murphy, and GP admit that representations were made to prospective bondholders by the methods alleged but dispute the content of the representations made. Mr Careless and Surge contend that the Claimants' case on the alleged representations is inadequately pleaded. Mr Careless and Surge make no admissions as to whether the alleged representations were made or the precise meaning to be attributed to the words of the representations pleaded by the Claimants, but contend that a number of the alleged representations are contrary to the express wording of the information memoranda and/or brochures.

17. The Claimants allege that the First to Tenth Defendants received substantial sums directly or indirectly from LCF, totalling £136,189,713.76, and that these sums were misappropriated from LCF and/or LOG by the First to Tenth Defendants. The various Defendants admit that they received certain sums but deny that these sums were misappropriated; rather, each contends that this was money to which they were lawfully entitled.

18. As just stated, LCF lent the sums it received from bondholders to various companies. The Claimants allege that all these companies were connected to and/or controlled by the First to Fourth Defendants and, further, that the loans (and associated sale agreements) were a device to conceal the misappropriation of money from LCF by the First to Tenth Defendants.

19. As noted above, one of the borrowers was LOG. This company also lent sums it borrowed from LCF to various entities. These entities were consequently the indirect recipients of funds from LCF. The Claimants allege that all of these companies, apart from Atlantic Petroleum p/f ("Atlantic Petroleum") and Independent Oil and Gas ("IOG"), were connected to and/or controlled by the First to Fourth Defendants and, further, that the making of the loans was (at least in part) a device to conceal the misappropriation of money from LCF and/or LOG by the First to Tenth Defendants. The Claimants contend that, of the approximately £122 million borrowed by LOG from LCF, only £38.4 million was applied by LOG to genuine commercial transactions.

20. The Claimants allege that in many instances borrower companies were incorporated only very shortly before entering into loans; the borrower companies often conducted no discernible business activity beyond borrowing money; borrowing companies failed to file statutory accounts; borrowing companies manipulated their accounting year-ends; the names of borrowing companies were changed for no discernible reason; loan debt was allocated arbitrarily to borrower companies apparently without reference to any genuine commercial need; very substantial loans were advanced to borrower companies without any written loan agreement in place; loan agreements were dishonestly back-dated; sums purportedly borrowed by one company were paid to some other recipient for no discernible reason; sums purportedly lent to borrower companies were paid directly or indirectly to certain of the Defendants; security agreements were incomplete or

otherwise defective and substantial borrowing was unsecured or insufficiently secured; and LCF's security trustee was owned and controlled by Mr Sedgwick and, subsequently, Mr Thomson.

21. The Claimants also allege that the alleged misappropriations were effected in some cases through the creation of dishonest transactions which had no commercial rationale but were implemented to disguise the misappropriation of bondholder money. These include transactions described as the Lakeview SPAs, the Elysian SPA, the Prime SPA, the LPT SPA and the LPE SPA.

22. The Claimants also allege that LCF was operated as a Ponzi scheme and that payments of interest and principal to existing bondholders were funded by the proceeds of new bonds, rather than from income or other resources generated by the borrowing companies themselves. They allege that the borrowing companies never paid any amounts from their own resources to LCF and that any interest payable on their loans was covered by LCF allowing increases in the principal amounts they owed. The Claimants say that all repayments to existing bondholders were funded by sums raised from new investors.

23. Mr Thomson admits that he had a 5% beneficial interest in a number of LCF's borrowers but denies any impropriety and maintains that all loans were backed by sufficient security. He contends that the business of LCF was legitimate throughout.

24. Mr Hume-Kendall admitted (before settling) that he was interested in various of the borrowers of LCF and/or LOG but denied any impropriety and, in particular, contended that all lending by LOG was made in good faith for the purposes of LOG's business. He denied any wrongdoing.

25. Mr Barker admitted (before he settled) that he, Mr Hume-Kendall, Mr Thomson, and Mr Golding were interested in various of the borrowers of LCF and/or LOG but denied any impropriety and contended that all lending by LOG was made in good faith for the purposes of LOG's business. He admitted receiving sums arising from share sales but said that they were proper sales and arose from the restructuring of the group of which LOG was part and the acquisition of certain technology companies by that group.

26. Mr Golding admits in his Defence that he had a beneficial interest in companies which borrowed sums from LCF and/or LOG but denies any impropriety. Mr Golding says in his Defence that he was not a director of any of those borrowing companies and that (save in relation to FS Equestrian Services Limited ("FSES")) he was not involved in the decisions taken by those companies to borrow from LCF and/or LOG. Mr Golding also admits that he received sums pursuant to the share sales; he says these were bona fide and genuine commercial transactions pursuant to which he was entitled to the sums received in consideration for the sale of his various interests.

27. Mr Sedgwick admits in his Defence that loans were made by LCF and LOG to connected entities but alleges that he was not aware that LCF only made loans to connected entities and denies any impropriety. He admits that certain companies had recently been incorporated but avers that was part of a restructuring exercise. He admits that he controlled LCF's security trustee but says that he relied on LCF's solicitors, Lewis Silkin, that the appointment of the security trustee was valid and appropriate. He admits his involvement in the share sales by Mr Barker and Mr Hume-Kendall but says that they

were proper and arose from the restructuring of the group of which LOG was part and the acquisition of certain technology companies by that group.

28. Mr Careless and Surge do not admit that there was any fraud or wrongdoing in the business of LCF. They deny that they participated in any wrongdoing there may have been. They say that their role was limited to providing LCF with third-party, outsourced investor facing services and they did not participate in the lending, treasury, or financial aspects of LCF's business; and always believed LCF's business to be genuine and legitimate.

29. Mr Russell-Murphy and GP make no admissions as to the Claimants' allegations. Mr Russell-Murphy says that he was acting as a salesman and was entitled to receive the sums he did.

30. As to the legal character of the claims, the Claimants allege that the representations made by LCF to bondholders were false and that the business of LCF was carried on with the intent to defraud bondholders and/or for the fraudulent purpose of misappropriating bondholder monies and/or was operated as a Ponzi scheme. The Claimants allege that each of the remaining live Defendants was knowingly party to that fraudulent trading and should therefore make contributions to the Claimants' assets. The relevant Defendants deny these claims.

31. The Claimants also allege that that Mr Thomson and Mr Golding breached the duties they owed to LCF by reason of the matters set out above and that such breaches caused LCF loss and damage. Mr Thomson and Mr Golding deny these claims. As already noted, Mr Golding denies that he acted as a director of LCF and therefore denies that he owed any duties to LCF.

32. The Claimants allege that the other live Defendants dishonestly assisted Mr Thomson and Mr Golding in breaching their fiduciary duties to LCF and are therefore liable to compensate LCF for the relevant losses. All the live Defendants deny these claims.

33. The Claimants also make proprietary claims. The Claimants allege that Mr Thomson and Mr Golding caused LCF to pay away money in breach of their duties to LCF, to the First to Eighth and Tenth Defendants, and that these Defendants received such sums with knowledge of these breaches such that it would be unconscionable for them to gain or retain any beneficial interest in the assets received. The Claimants contend that such assets received by the First to Eighth and Tenth Defendants, or the traceable proceeds thereof, are held on constructive trust for LCF and/or subject to LCF's equitable interest therein. The relevant Defendants deny these claims. They say that there was no misappropriation. They also argue that the claims fail in law because the money which reached the Defendants were no longer the property of LCF, having been lent to borrowing companies or paid to Surge as fees.

Witnesses of fact

34. The key events took place up to a decade ago. The factual history is complex and involved. The witnesses naturally struggled to remember the details and sequence of events. Memories are mutable and are influenced by the forensic process and by interests and motives. I shall assess the oral testimony as part of the entire evidence. In this case, there are extensive contemporaneous documents including emails, texts and other

electronic messages. There are some gaps, as explained below, but it is generally an informative record.

35. I have reached findings of fact on the basis of the witness testimony, the contemporaneous documents, the motives of the parties and others, the uncontested and uncontroversial facts, and the inherent probabilities.

36. I will make specific observations about the witnesses' credibility when reaching findings of fact. Some comments are made here about my impressions of the witnesses.

37. The Claimants' witnesses were Mr O'Connell, Mr Shinners, Ms Lloyd, Mr Hudson and Mr Pitt.

38. Mr O'Connell is one of the administrators of LCF and LOG. He gave evidence about the states of affairs in the administrations. His evidence was clear and concise and was not seriously challenged. I accept it.

39. Mr Shinners is one of the administrators. He gave evidence about the way the administrators dealt with the IOG assets owned by LOG. He explained that LOG was not itself a trading company and only held assets. He answered questions fairly and clearly and I concluded that his evidence was reliable.

40. Ms Lloyd is an employee of the administrators' firm. She gave evidence concerning the decisions taken by them about the disposal of some of the assets in the administration of LCF. She was a cautious witness who was careful to limit her answers strictly to the question. At times she seemed nervous and somewhat defensive, but I saw no reason to doubt her evidence, which I accept as reliable.

41. Mr Pitt is a chartered accountant who advised the administrators in relation to the sale of the Waterside site. He explained that the title was only sorted out in the summer of 2021. He was a straightforward and helpful witness. His evidence was not undermined by cross-examination, and I accept it.

42. Mr Hudson is a forensic accountant. He has produced three witness statements dealing with the claimants' case that LCF operated a Ponzi scheme. He has undertaken a detailed analysis of bank statements, internal company ledgers and other books and has explained money flows between investors, LCF, the borrowing companies and various other entities. He summarised his conclusions in the form of witness statements. The Defendants did not object to the admissibility of his evidence but submitted that he was not an expert witness and that he had not sought to comply with the CPR provisions for such a witness. That is correct, but he was not put forward as an expert. He occasionally became argumentative under cross-examination, but I concluded that his evidence about the money-flows based on the bank and accounting records was presented in a helpful and convenient form, and the Defendants did not seriously challenge his summaries of what that evidence showed.

43. I also heard evidence from Mr Thomson, Mr Careless and Ms Venn.

44. Mr Thomson gave some evidence about his physical condition and mental health. In December 2023, he underwent surgery on his spine. This has left him in considerable pain for which he was still taking painkillers, including opioids, during the trial. I held a

ground-rules hearing at which I directed that there would be appropriate breaks to allow Mr Thomson to leave the witness box and walk about to relieve his pain. I explained to Mr Thomson that he should indicate if he needed a break. I also ruled that the usual bar would not apply to discussions between Mr Thomson and his lawyers insofar as they concerned his health and pain tolerance while he was giving his evidence. In giving his evidence, Mr Thomson did ask for breaks from time to time. On some occasions it was necessary to stop the cross-examination earlier than usual to give him longer breaks. Counsel for the Claimants also agreed that he would seek to ensure that his questions were readily comprehensible. I was satisfied that he did so.

45. As to Mr Thomson's mental health, I was provided with the evidence of a psychiatric consultant who explained that Mr Thomson was subject to anxiety and stress and presented signs of adjustment disorder, which could affect his concentration and focus. Mr Thomson's advocate asked that the details of his condition should not be publicly disclosed and there is no reason in this judgment to do so. The consultant psychiatrist concluded that Mr Thomson was able to understand the questions he asked during their consultation. I have taken this report into account when assessing Mr Thomson's evidence. I was satisfied throughout his evidence that Mr Thomson was able to understand the questions posed in cross-examination. He engaged with the details of the questions and sometimes asked for clarification. He also appeared to me to be aware not just of the meaning of the questions but of where he thought they might be leading.

46. Mr Thomson was an extremely poor witness. My reasons for reaching this conclusion included the following:

    i. The documentary record establishes that Mr Thomson was repeatedly involved in the creation and back-dating of documents for the purposes of misleading third parties, including auditors. I shall refer to numerous examples of this below. Mr Thomson accepted that some of the contemporaneous documents he was taken to contained lies or omissions. He sought to justify these as harmless lies or as a way of stalling or buying time. I reject this attempt to downplay his lies. They included deliberately lying to auditors about a non-existent key contract of LCF, lies in a mortgage application form and lies to his solicitors about how LCF had come to be listed on a website. They were serious lies and his attempts to justify them throw significant light on Mr Thomson's approach to truth-telling generally.

    ii. I am satisfied that Mr Thomson gave evidence in court which was not only untrue but which he knew to be untrue. Indeed, he was serially untruthful, and it was hard to credit very much of what he said. Some examples are the alleged existence of two written agreements dated 15 July 2015 on their face, which I have concluded were only created much later, after the collapse of LCF; Mr Thomson's explanation for a series of payments made to him personally by Surge; Mr Thomson's evidence about the circumstances in which he signed tax returns for 2015/16 and 2016/17; his contention that he had handed control over One Monday Limited ("One Monday") to Mr Barker; and his contention that a signed copy of a service agreement between LCF and Surge was sent to him by Surge in October 2016.

    iii. Mr Thomson was often evasive in answering questions, even in the face of documents which undermined the evidence he was giving.

iv. When he thought it suited his case, he claimed to remember conversations and oral agreements which were not referred to in his witness statement or reflected in the documentary record. But at other stages in his evidence, when it also suited him, he fell back on saying that he had no recollection at all, even when this was improbable.

v. As his evidence progressed, he was increasingly inclined to blame other people, saying they were responsible for tasks or communications and that he had little involvement, when the documents showed that he was indeed centrally involved.

vi. There were occasions when he disagreed with a factual proposition which had been taken verbatim from his own witness statement.

vii. His answers sometimes shifted and became inconsistent, within a short period of cross-examination.

viii. There was language in his witness statement which meant nothing to him and which had to be explained to him.

47. For these reasons, I have treated Mr Thomson’s evidence cautiously except where supported by documents or uncontested facts.

48. Mr Careless began his evidence by giving short and clear answers. As the cross-examination went on this changed and he started to give long, digressive, self-exculpatory ones, often repeating refrains. I concluded that I must take a cautious approach to his evidence save where corroborated by documents or uncontested facts:

i. I found some of his evidence to be incredible as it was given. An example was his evidence about Surge’s payments to Mr Golding of 1% of the gross receipts raised from new bondholders (amounting to 4% of Surge’s fees). I could not accept his explanation that this was an introduction fee, since it was agreed long after Surge started working for LCF and there was no commercial reason Surge would have agreed to pay it other than to keep Mr Golding on-side and maintain its 25% commission.

ii. Another example was the payment by Surge of 0.5% of gross receipts (2% of Surge’s fee) to Mr Thomson. I was unable to accept his evidence that this was for work conducted by Mr Thomson for Blackmore, another client of Surge.

iii. Many of Mr Careless’s answers in cross-examination were long and formulaic, referring to LCF's lawyers and auditors, even when they had little to do with the question. I reached the firm impression that he was adhering to a preordained script rather than trying to answer the specific questions.

iv. His evidence about the sequence of events was often confused: he frequently referred to much later events (including the audits of LCF’s accounts and meetings with Goldman Sachs) to explain his conduct on earlier occasions. Mr Careless was willing to accept on many occasions that he could not remember the sequence of events. This was realistic, but it undermined his insistence that he had a firm and clear memory of something that happened to be helpful to his case.

v. He accepted that he had rehearsed the relevant events in his mind a great many times over the intervening years and had been interviewed on several occasions, for which he had carefully prepared. It is entirely natural that there was much blurring and even confusion in his memory of the sequence of events. There is obviously much at stake in this case, and he has an interest in presenting his own conduct in the best possible light. But I have no doubt that it has affected his recollection of events which took place up to nine years ago.

vi. Mr Careless gave evidence to the administrators at a private examination under section 236 of the Insolvency Act 1986 in 2020 which is inconsistent with the evidence now given. At the date of the examination the administrators did not have all the documents now available to them. I have concluded that these changes in his evidence only came about because Mr Careless has now been confronted with further documents.

vii. The documents show that Mr Careless prepared for the private examination with a series of model answers, which he was tested on. These included that the 25% fee was a market fee and that he took comfort from the audited accounts. These are themes that Mr Careless repeated many times in his oral evidence at this trial.

viii. Some of the contemporaneous evidence shows that he was willing on occasion to tell deliberate lies about the relevant events. An example is an email of 1 April 2019 in which he described the steps he had taken in a proposed property transaction in the Isle of Wight. I found his evidence was not honest.

49. Ms Venn worked with Mr Careless. (For some of the relevant period, before her marriage, she was called Kerry Graham, but for convenience she has been referred to throughout the trial as Kerry Venn.) She was a confident witness who generally gave her answers clearly. However, I concluded that I should treat her evidence cautiously save where corroborated by a document or the uncontested facts:

i. Ms Venn made it clear that she thought Mr Careless was wrongly accused of wrongdoing. There is nothing wrong with that, but I have no doubt that it coloured her recollection. She had read the transcripts of Mr Careless's cross-examination. Again, there is nothing inherently wrong with that but there were parts of her evidence which closely echoed Mr Careless's oral testimony.

ii. Ms Venn was integrally involved in the relevant events, which have led to huge publicity, and she has an interest in being seen in the best light.

iii. As her evidence went on, she gave longer, more argumentative answers. On a number of occasions, she stated confidently that she had or had not done or thought something only to be shown a document which undermined her answer and belied her confidence.

iv. It is also clear that soon after the closure of LCF's business she and Mr Careless were concerned to defend Surge's actions and that she and others collected materials to seek to justify what had happened. Hence Ms Venn has been preparing the defence of the allegations against the Surge Defendants for at least five years.

v. I concluded that Ms Venn was concerned seriously to downplay some of the concerns she had at the time about Mr Thomson's honesty by putting her contemporaneous descriptions of him down to a personality clash and his misogyny. While there was an element of truth to that, I have no doubt that Ms Venn in fact often mistrusted Mr Thomson. The documents show that she did not trust him. Nor did others at Surge.

vi. Moreover, Ms Venn's oral evidence on a central point involved a significant shift from her witness statement. She said there that when there were concerns, she and Mr Careless normally asked Mr Russell-Murphy to speak to Mr Thomson and provide an answer and that Surge were always satisfied with the response. In her oral evidence, however, she said that what she meant was "loosely satisfied". She later said that she had obtained a satisfactory answer on a "low scale of satisfaction", which meant that she still had doubts about the relevant point but could not argue with what she had learnt. She also described a range of being satisfied from strong to weak and said that on some points she was only "weakly satisfied".

vii. None of this nuance appeared in her witness statement, which implied that Surge was completely satisfied by what Mr Thomson said. This was a significant shift. I came to the conclusion that when Ms Venn said in her statement she was satisfied she was generally saying that she was not in fact satisfied of the truth of what Mr Thomson had said, but that she did not have the material to prove that what he was saying was untrue. That is far removed from the impression given in her witness statement. As explained in detail below there are many documents showing that she did not trust Mr Thomson or LCF at all.

viii. Overall, I concluded that the contemporaneous documents provided a much better guide to the history than her statement and, indeed, her oral evidence, which was often a charitable reconstruction.

ix. I therefore treat her evidence with caution, although there were parts of Ms Venn's evidence which I accept. I also record that I did not think she was deliberately trying at any stage to mislead the court.

50. The court may draw adverse inferences from the decision of a party not to give evidence: see *Efobi v Royal Mail Group* [2021] 1 WLR 3863 at [41].

51. Mr Thomson explained in his witness statement that he was calling evidence from the audit partners at PwC and EY using witness summonses. He also said at pre-trial hearings that he would call not just the PwC and EY partners but also partners from Oliver Clive and Lewis Silkin. In the event no such witness summonses were served. There was no formal explanation for this, but counsel for Mr Thomson said that PwC and EY engaged City solicitors to contest any such summonses. Given that Mr Thomson has serious constraints on his access to resources (owing to proprietary freezing orders), I do not think I should draw adverse inferences from his failure to require the attendance of these witnesses.

52. Though he appeared at the trial, Mr Sedgwick chose not to give evidence despite having served a witness statement. I explained to him that the Claimants might invite the court to draw adverse inferences from that decision. There were many points where Mr

Sedgwick could have given evidence. These included his understanding of the representations that were made to bondholders and the underlying business of the borrowing companies, the purposes of the various SPAs and whether they were (as alleged by the Claimants) uncommercial transactions used to mask misappropriations, the role of Global Advance Distributions Limited ("GAD"), the role of the security trustee, and the backdating of documents. Mr Sedgwick did not explain his reasons for not giving evidence, other than by submitting that the Claimants had not proved their case. I have concluded that I should draw adverse inferences from his decision not to give evidence. I set out below the respects in which I consider adverse inferences should be drawn below.

53. Mr Russell-Murphy has not been formally debarred from defending. He has not put in a witness statement or participated in the trial. The Claimants did not, however, invite me to draw adverse inferences against him from his failure to participate. Similarly, in circumstances where Mr Golding was debarred from defending the claim for failing to disclose documents, the Claimants did not invite the court to draw any adverse inferences against Mr Golding.

The expert evidence

54. There was expert evidence on three issues: the market rate for the services provided to LCF by Surge; the value of LOG's interest in IOG; and the value of land in the Dominican Republic.

55. On the first issues, the experts gave evidence on whether there was a market rate for the services provided by Surge and whether hypothetical parties transacting at a market rate would have agreed such a rate. The experts agreed that there was no generally accepted market rate for the set of services provided by Surge. On the second point, they differed.

56. The Claimants called Dr Okongwu, who produced two reports. He is a well-qualified and experienced economics consultant. I considered that he gave careful and considered evidence. He listened meticulously to the questions and answered fairly. His reports were fully reasoned and contained numerous citations.

57. The Surge Defendants called Mr Grainger. His experience has been as a regulatory and compliance consultant. He has broad and long-term experience in those fields. The Claimants made a number of criticisms of his evidence, including that: (a) he lacked relevant expertise and appeared to confuse personal experience of certain transactions, such as the cost of outsourced services, with expertise in those transactions; (b) he did not cite any relevant material concerning Surge's fees other than contemporaneous documents provided by Surge's solicitors; (c) his conclusions were based on assertion rather than reasoning; (d) some of his conclusions were circular; (e) he failed in the joint memorandum to address the differences between the experts on some issues, basing this on grounds of "irrelevance", even though he had originally raised those issues himself; and (f) he was partisan and unwilling to consider positions contrary to the case of Surge.

58. I shall return below to the substance of this evidence to the extent that it matters. But at this stage I should record that I concluded there to be real force in each of the Claimants' criticisms. Mr Grainger failed to engage properly with examples which might lead to conclusions damaging to the Surge Defendants' case. He struck me as partisan. I

concluded that where the experts differed, the evidence of Dr Okongwu was to be preferred to Mr Grainger's.

59. But the key point to take from this evidence was that the experts were able to agree that there was no market rate for services of the kind provided by Surge.

60. The second discipline was the value of LOG's interest in IOG. The Claimants' expert was Mr Osborne, a forensic accountant and valuer. He produced two reports. Mr Osborne's evidence was clear and was not seriously challenged in cross-examination. It was not suggested that he lacked expertise and I accept his evidence. Mr and Mrs Hume-Kendall instructed Mr Wright to give evidence on this issue. Mr Wright produced two reports. Following the settlement agreed between them and the Claimants, Mr Wright did not give evidence and no reliance was placed on his reports by the remaining Defendants.

61. The third discipline was the value of the land in the Dominican Republic. The Claimants' expert was Mr Watson, an expert valuer with relevant experience with land there. He was the only expert who gave evidence in this field. He produced two reports, one dealing with the value of The Hill and the other addressing the value of The Beach. There was no serious challenge to his evidence in cross-examination and I accept it.

Findings of fact

62. In reaching findings of fact, I shall not address every submission or item of evidence referred to by the parties but make findings on the points I consider material. I have, however, carefully considered all the evidence and submissions in reaching these conclusions. I apply the civil standard of balance of probabilities (while noting the seriousness of the allegations).

63. Mr Thomson submitted that some of the facts covered during the trial were not properly in issue on the pleadings. His counsel did not object to these areas of the case being covered in cross-examination or to the documents being referred to during the trial. It is convenient to make relevant findings and then address the pleading points.

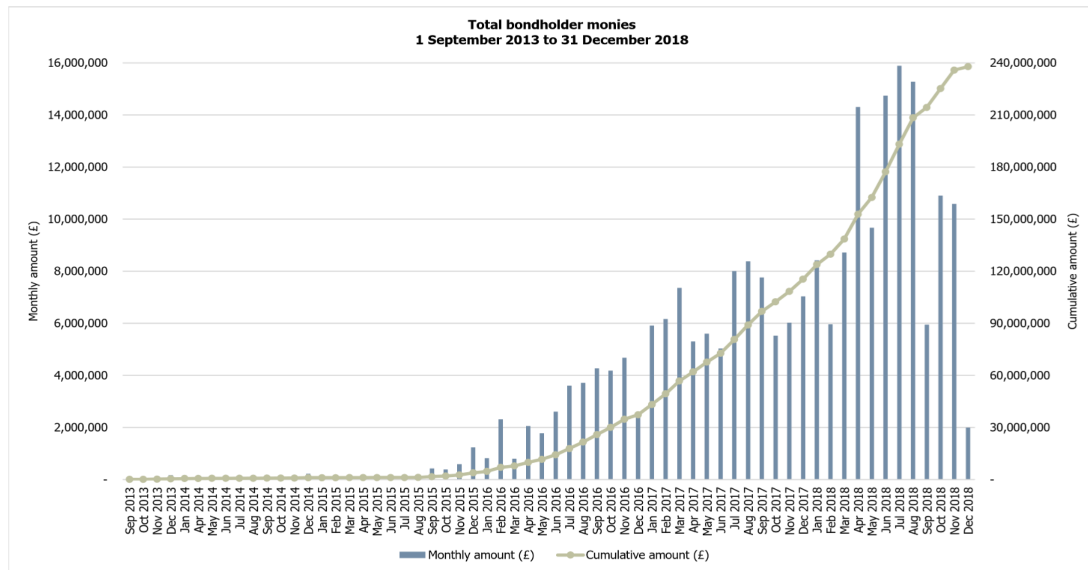
64. I have drawn on the written closing submissions of the parties in compiling this section. The Claimants set out a detailed chronological summary of the documents. I invited counsel for the Defendants in their closing submissions to indicate any points of disagreement with that summary. Counsel for the Defendants did not object to this course. Much of the Claimants' chronological summary was not contested by the Defendants and I have drawn on it below, amending and supplementing it as appropriate. This does not of course apply to the inferences or findings of facts on the disputed issues which the parties have invited me to make. I specifically asked the parties to identify in their closing submissions the findings of fact they sought and the basis for these findings. They helpfully did this and I have taken account of their submissions.

65. The arrangement of this section of the judgment is partly chronological and partly thematic.

LCF's fundraising from bondholders

66. The following graph shows the amounts raised by LCF from bondholders over the full period from its incorporation (as SAFE) until the FCA raid on 10 December 2018. There

are certain landmark dates. Surge started selling bonds in August 2015. LCF started issuing ISA bonds in December 2017.



The Hill

67. The early history conveniently starts with an investment scheme for the purchase of off-plan plots of land in the Dominican Republic of an area known as "The Hill" by investors who had paid deposits. The Hill was an undeveloped plot of c.136 hectares, about twenty miles from the north coast of the Dominican Republic, near a small village called Cupey.

68. The plot was acquired by a Dominican Republic company, Inversiones 51588 SRL ("Inversiones"), in March 2012 for a sum of £708,752. Inversiones was a subsidiary of Sanctuary PCC, a Guernsey company which was itself a subsidiary of Sanctuary International Resorts Ltd ("Sanctuary"), a company connected with Mr Golding and Mr Hume-Kendall. I shall return to the dealings with The Hill.

69. It is, though, convenient here to summarise the evidence about its value. There have been several valuations of The Hill. There was a draft valuation dated 24 December 2013 prepared by Jonathan Marshall which valued it at US$7.3 million. The report expressly stated that it was prepared for internal purposes and should not be relied upon for loan security. Mr Marshall was instructed to review a valuation conducted by a Julio Perdomo. Mr Marshall visited the Dominican Republic and met Mr Perdomo. The draft said that it was for the "fair value" of the land (i.e. the estimated price for a transfer between identified knowledgeable and willing parties that reflects the interests of the parties). He considered that the value reached by Mr Perdomo was excessive and applied a discount to it. His report was not a Red Book valuation and said that limited reliance should be placed on it.

70. A revised draft valuation of The Hill by Jonathan Marshall was circulated on 20 March 2014. Again, it was for fair value. In this valuation, Mr Marshall estimated the value of the same site to be US$19.6 million. The draft report does not contain the earlier reservations about the estimate prices per square metre suggested by Mr Perdomo. He also included a residual valuation based on a proposed development plan. The draft explained that Mr Marshall had not undertaken a detailed development appraisal with

cash flow forecasts and had ignored interest costs. The draft said that it was not a Red Book valuation, and that limited reliance should be placed on it.

71. There were also three valuations of The Hill produced by the same Mr Perdomo who was referred to in Mr Marshall's draft reports. The first, dated 17 May 2017, assessed the value of The Hill at US$37,794,482.88. The bulk of this figure was accounted for by land which Mr Perdomo assigned a value to of US$100 per m^2; this was substantially above the figure of US$16.60 per m^2 he had discussed with Mr Marshall. The second, dated 10 May 2018, estimated the value of The Hill to be US$39,594,940.90. The third, dated 13 November 2018, assessed the value of The Hill at US$44,601,340.90. By this time, the land containing the bulk of the value was given a value of US$125 per m^2.

72. Mr Perdomo's methodology appears to have been to estimate the price per m^2 of land from comparables and then multiply this by the relevant area, without applying any discount. The values he reached are much higher than those produced in Mr Marshall's reports and do not appear to have taken account of the extent of the development authorised on each comparable. The three reports do not state that they comply with Red Book requirements.

73. There have been further valuations since the collapse of LCF. Cushman & Wakefield conducted a valuation of The Hill as at 1 June 2020 which gave it a market value (following 12-24 months of marketing) of US$2 million and a liquidation value (following 3-6 months of marketing) of US$1 million.

74. Rofiasi Ingeneria conducted a valuation of The Hill as at 12 November 2020, which valued it at US$928,227.

75. Mr Watson, the Claimants' expert in this case, has assessed the market value of The Hill (using the comparables method) as at 3 October 2023 to be US$5.43 million. He puts its value between April and November 2017 at US$4.55 million.

76. I find that the value of The Hill at the material times was that given by Mr Watson. I also find that it would have been obviously reckless for any commercial lender to have relied on the draft reports of Mr Marshall or Mr Perdomo. Mr Marshall's reports were expressed to be in draft. They were not Red Book valuations. They referred to fair value rather than market value. The second report stated that he had conducted no detailed cash flow analysis for the development. The second report referred to comparable figures without discounting them for the reasons contained in the first report (which appeared sound). Mr Perdomo's reports used comparable figures without discounting them, as they should have done as explained in the first report of Mr Marshall. Moreover, the land had been bought as a bare plot in March 2012 for c. £700,000 and it remained in that state. There was no evidence that there was any change in the planning permission for it.

The Beach

77. There was a second undeveloped site in the Dominican Republic known as "The Beach" (or "Magante"), consisting of 38 parcels of land.

78. On 22 August 2012 Tenedora 98520 SRL ("Tenedora"), a subsidiary of Sanctuary, entered into a contact with numerous vendors to acquire the land in 38 parcels, for a total of c. US$3.5 million. This contract was unperformed for some years. In 2013, Mr Hume-

Kendall and Mr Golding decided not to proceed with the acquisition and development of The Beach. It was not until late 2017 that Tenedora began to pay for and acquire some parcels (which were later registered in its name in 2018 and 2019).

79. There have been various valuations of The Beach. I accept the Claimants' submission that it is extremely hard to compare the valuations because they cover different areas of land.

80. Under the 22 August 2012 sale contract, the 38 parcels of land totalled 241,707.44m^2 (i.e. c. 24 hectares).

81. Mr Marshall prepared a draft desktop appraisal in about May 2014 which said the site extends to 23.5 hectares. This was said to be for fair value. It was not a Red Book valuation. Mr Marshall reviewed a report dated 21 May 2013 by Mr Perdomo. He referred to a proposed development plan for 320 units for a luxury spa and resort. As to Mr Perdomo's comparables, Mr Marshall observed that these had taken little account of the extent of the development on each comparable or factors like location, situation, lot size, planning permission, road access and development timescale. Mr Marshall's draft report said that he considered Mr Perdomo's site value to be excessive and that it would not be prudent to use it. Using the residual method Mr Marshall derived a value of US$37.95 million. He said that the appraisal was very limited in scope and had been undertaken without the benefit of a full investigation as to costings and comparables and that the addressee (International Resorts Group plc ("IRG")) should therefore place limited reliance on the figures.

82. There was an appraisal produced in November 2016 by one Rafael Oviedo concerned with an area of some 25.8 hectares, comprising thirty-two certificates of title from different owners. Mr Oviedo was described as an "architectural planner". He appears to have given various views about market value, one of US$11.61 million (as the land currently was), US$16.777 million (with non-objections to its development) and US$25.8 million (with a full development project approved). The appraisal was not a Red Book valuation, and its purpose is unclear. Nor did it contain any reasoning to support the conclusions.

83. In May 2018 Mr Perdomo produced a report in which he valued land labelled as Magante I, comprising a total of c. 29.8 hectares. He said the market value was c. US$42.5 million. He used a comparative approach. The report was not a Red Book valuation. There appears to have been no adjustment of the comparables listed by Mr Perdomo for location, size, planning or road access.

84. Mr Perdomo produced another report in November 2018 for land called Magante I and Magante II, giving the area of the former as 29.8 hectares (hence larger than his earlier report). He gave the same value of c. US$42.5 million for Magante I.

85. After the collapse of LCF, a firm called Rofiasi was instructed to value a site of 29.5 hectares, comprising parts of Magante I and Magante II. Rofiasi plotted Magante I as consisting of only some 15.2 hectares.

86. Mr Watson has valued the same area of 15.2 hectares on 2 October 2023. He valued it at £4.9 million.

87. I find for these reasons that the historical valuations are of extremely limited value.

88. I find that, in any event, Tenedora only ever owned certain of the parcels of land and never owned the entire site. It only began to acquire the parcels in 2017. I also find that it is difficult to place a value of the parcels owned by Tenedora because, without owning substantially all the parcels, it would not have been possible to develop the resort.

89. I find that the value of The Beach at the material times was no higher than that given by Mr Watson. I also find that it would have been obviously reckless for any commercial lender to have relied on earlier other reports and appraisals. Mr Marshall's was in draft and was not a Red Book valuation. It referred to fair value rather than market value and said that it contained no detailed cash flow analysis for the development. Mr Perdomo's reports used comparable figures without discounting them (as should have been done for the reasons explained in the draft report of Mr Marshall). There were discrepancies in the areas covered. Moreover, the original contract was to buy the land as bare plots for a total of c. US$3.5 million and they remained in that state. There was no evidence that there was ever any change in the planning permission for the plots. As just explained such plots as were owned by Tenedora from 2017 onwards were not contiguous, and substantially the entire site was required for the proposed development to take place.

The Sanctuary investors

90. Sanctuary was initially owned by Mr Golding's brother, Mr Ryan Golding (20%), Mr Mark Ingham (40%), and Mr Andy Woodcock (40%).

91. Sanctuary marketed the sale of off-plan villas on The Hill before any development had taken place. Investors paid deposits. Sanctuary agreed to pay interest on the deposits and agreed that if an investor changed their mind, the investor did not have to pay the balance and acquire the property but could exercise an option to be repaid 120% of the deposit. Sanctuary took deposits from over 280 investors. Mr Ingham and Mr Barker were closely involved in this process.

92. I find that the sales team who introduced purchasers to Sanctuary were paid 20% of the deposits.

93. Mr Russell-Murphy was also involved. He sent invoices to Ecoresorts Sales Limited, a company which engaged in marketing the villas. Sanctuary made payments to him. He also had dealings with Sanctuary's investors.

94. The investment scheme ran out of money and was unable to proceed with the development. The Hill remained an undeveloped, bare, plot.

95. By early 2013 Sanctuary became unable to pay the monthly interest due to investors.

96. At this stage Mr Hume-Kendall became involved with Sanctuary. He developed a rescue package for the Sanctuary investors. Mr Thomson was also involved.

97. Mr Hume-Kendall and Mr Thomson were at the time directors of a company called Sustinere Group Plc, which was involved in developing the rescue package. Sustinere made payments to Sanctuary to prevent it becoming cash flow insolvent. Some of the shares in Sanctuary were transferred to Mr Thomson.

98. By May 2014 at the latest, Mr Thomson became the owner of 100% of Sanctuary PCC on trust for Mrs Hume-Kendall, Mr Golding and his family, and Mr Thomson.

99. In May 2013 Sanctuary sent letters to the Sanctuary investors about the rescue package involving Sustinere. The letters said that the investor was a regulated UK PLC formed 35 years ago and that its directors and managers had all previously held senior positions in some of the UK's largest firms and had a wealth of experience in the leisure and investment sectors. They also referred to Buss Murton as one of the UK's oldest and respected law firms. Mr Sedgwick was a partner in Buss Murton.

100. In June 2013 there was a roadshow to promote the rescue package, led by Mr Hume-Kendall. At roadshow meetings, the investors were told that: (i) they would have the benefit of security through a UK trust holding security over the land at The Hill; (ii) there would be an improvement in the terms of the buyback option; (iii) their existing option over land at The Hill could be transferred to land at The Beach on the same terms; and (iv) monthly interest payments on sums invested would be restarted.

101. In order to benefit from this package of rights, investors would need to pay an additional deposit amount. Most of the existing investors agreed to this deal. The additional deposits were paid to Buss Murton.

102. Trust arrangements were put in place in respect of the deposits. I find that under these arrangements (a) the shares in Inversiones came to be held by Sanctuary PCC on trust for a company called El Cupey Limited, and (b) the single share in El Cupey Limited came to be held on trust for Sanctuary investors, whether or not they had signed up to the rescue package. Mr Thomson and Mr Hume-Kendall were the initial directors of El Cupey Limited.

103. As explained below, there were various later reorganisations of the ownership structure. But throughout these changes the trust arrangements persisted, under which the shares in Inversiones (which owned The Hill) remained beneficially owned by the Sanctuary investors.

104. New contractual arrangements were put in place for those Sanctuary investors who had agreed the rescue deal. The additional deposits from such investors amounted to c. £2.4 million.

105. The monthly interest liability of Sanctuary to its investors was c. £88,000 per month from 2013 to the first half of 2016, at which point it reduced to £30,000 per month.

106. The total liability of Inversiones to the Sanctuary investors in relation to their buyback options was recorded as £27,282,386 as at June 2017. This was the principal amount of the liability covered by the El Cupey trust arrangements at that date.

107. I find that a large portion of the additional sums of c. £2.4 million raised under the rescue package were in the event paid to companies owned by Mr Golding, Mr Golding's brother, Ryan Golding, and Mr Hume-Kendall. They were not used in the development of either The Hill or The Beach.

108. Specifically, One Monday Limited, a company associated with Mr Thomson, received payments of c. £1.2 million from Sanctuary. One Monday then made various payments

in late 2013 and early 2014 including £535,000 to Clydesdale Property Developments Limited (Mr Golding's company), £200,000 to LV Management (Mr Hume-Kendall's company); £37,500 to Mr Thomson personally, and £50,000 to Ryan Golding.

109. LV Management received a further £370,000 directly from Buss Murton's client account (where Sanctuary's funds were held) and £60,000 was transferred to Sustinere. As explained in more detail below, I am satisfied that Mr Thomson was in control of One Monday at the time of these payments and that he knew about them.

110. Turning more specifically to Mr Thomson's role in these transactions, he had been a director of Sustinere since 22 March 2013. Mr Thomson directed Sustinere to provide financial support to Sanctuary in May 2013. As a director of Sustinere, Mr Thomson was involved in formulating the terms of the "rescue package" provided to Sanctuary in mid-2013. He explained in his witness statement that he "was involved in the planning and financing" of the Sanctuary project. Though he attempted in his oral evidence to distance himself from his involvement, I find that he was aware of the rescue deal and (as just explained) what happened to the sums paid through One Monday. He also knew that Sanctuary had sold villas off-plan to investors and that the villas had not been built. He also knew that Sanctuary had taken deposits from investors in the Sanctuary scheme and that interest payments were due to these investors.

111. As already noted, Mr Thomson became a shareholder of Sanctuary in June 2013 and Mr Thomson came (by May 2014) to own 100% of Sanctuary PCC, which he held on trust for Mrs Hume-Kendall, Mr Golding and Mr Thomson.

112. Mr Thomson was also a director of El Cupey Limited between 18 July 2013 and 1 August 2013. In this capacity, he signed a trust deed dated 30 July 2013 by which Sanctuary PCC agreed to hold its shares in Inversiones on trust for El Cupey. He therefore knew that The Hill was (through Inversiones) held on trust for the Sanctuary investors.

113. Mr Thomson also signed the new contracts with the Sanctuary investors who had signed up to the rescue scheme on behalf of Sanctuary. I find that he was aware of the terms of those contracts. These included that additional payments made by the Sanctuary investors would only be distributed in accordance with the instructions of the trust in favour of the Sanctuary investors; and the trust would ensure that sufficient funds were paid out of the deposits into accounts reserved to pay for planning consents and other purposes that the trust considered to be in the best interest of the Sanctuary investors as a whole. These contractual arrangements were vague and loosely worded. But I find that the impression given to the Sanctuary investors who signed up to the rescue package was that the additional funds would be deployed in obtaining planning permission and then developing the land. It was not explained to those investors that the funds they were paying over would almost immediately be paid out to the shareholders or others interested in the ownership of Sanctuary.

114. Mr Thomson also knew that additional deposits paid by Sanctuary investors who had signed up to the rescue package in an amount of c. £2.4 million were paid to Buss Murton; and that c. £88,000 was payable each month in interest payments to Sanctuary investors. Mr Thomson also knew, from an email sent to him on 14 May 2014 by Mr Sedgwick, that the potential liability of Inversiones to the Sanctuary investors was c. £23.5 million as at that date.

115. Mr Thomson also knew that neither he, Mr Golding nor Mrs Hume-Kendall, had paid the previous owners of Sanctuary for the shares in Sanctuary or Sanctuary PCC.

116. Mr Thomson also knew that because of the trust arrangements in favour of the Sanctuary investors, there was no free equity in The Hill.

117. Mr Thomson denied in his oral evidence that he knew that The Hill had been purchased by Inversiones for £708,752. I find that he did know this. A copy of the agreement documenting the purchase was in LCF's books and records and a copy of the agreement was attached to an email sent to Mr Thomson by Mr Ingham on 9 May 2017.

118. I find that Mr Thomson knew that Jonathan Marshall had produced a draft report in December 2013 that valued The Hill at US$7.3 million. He was sent the draft report by Mr Hume-Kendall on 24 December 2013. This report caused concerns because it was a lower value than had been anticipated. Mr Thomson was copied into the relevant emails.

119. Mr Thomson said at various stages in his evidence that he did not read emails if the subject line indicated that it was within someone else's remit, even if the email was marked "urgent" and related to the accounts of a company of which he was a director. I reject this evidence. I find that, save where there is good reason to suppose otherwise, such as ill health at a given time, Mr Thomson in general read emails sent or copied to him. I find in this particular instance that he knew about the concerns about Mr Marshall's draft appraisal.

120. I have already referred to the revised draft valuation report produced by Mr Marshall. Mr Thomson knew of this because it was sent to him by Mr Hume-Kendall on 30 March 2014. I have already commented on this. It was a draft desktop appraisal, not a Red Book valuation, and said it should not be relied on as a valuation report. Mr Thomson also knew from its contents that it omitted finance costs and that it was predicated on further income from the Sanctuary investors being available to fund the development of The Hill, when (as he knew) no such payments would be due until completion. I also find that Mr Thomson would have noted the substantial increase between the value in this and the earlier appraisal from Mr Marshall. As already mentioned, I find that no prudent businessman would have placed any reliance on this draft appraisal. It placed a value on the land at an amount hugely above the purchase price paid by Inversiones, despite almost nothing having been done since the date of the purchase. I find as a fact that Mr Thomson placed no reliance on it.

121. Mr Thomson later made use of a May 2014 draft appraisal from Mr Marshall for The Beach which contained a figure of $37.9 million. I shall return to this. I find that no prudent lender could have placed any reliance on this heavily caveated draft desktop appraisal without requiring a proper Red Book valuation. Mr Marshall expressly said in the document that he did not conduct any due diligence on the development plans and the report stated, "You should therefore place limited reliance upon these figures and we would recommend that no irrevocable decision is taken with regard to the property without commissioning a formal valuation report". I find that Mr Thomson did not actually believe the land to have a value of $37.9 million or anything approaching it.

122. I find that Mr Thomson knew that Tenedora had no valuable interest in The Beach. He knew that Tenedora had entered into an agreement giving it the right to acquire the plots

of land comprising The Beach for the payment of a total sum of US$3.5 million but had not actually acquired them.

123. I am also satisfied that Mr Thomson knew that until late 2017, Tenedora did not actually acquire any of the plots of land at The Beach. He claimed in oral evidence that he thought Tenedora had been proceeding with the purchase in the meantime. But he was informed by Mr Ingham, by email on 15 April 2016, that Tenedora did not own any of the land at The Beach and Mr Lee repeated this to Mr Thomson in an email on 16 March 2017. I reject Mr Thomson's evidence that he was unaware of these facts. This would have been particularly vital information for him as a director of LCF (as The Beach formed part of the supposed security for LCF's lending) and he would have been interested in its value. I find that he knew the truth.

124. Though Tenedora eventually acquired some of the parcels making up The Beach in 2017, it never in fact acquired the parcels needed to enable the proposed development. I am satisfied that Mr Thomson knew this: he continued to have an interest in what was happening to the development and would have been told the true position.

125. I have already mentioned that substantial payments were made to One Monday from the further sums raised from the Sanctuary investors. Mr Thomson was a shareholder of One Monday from 5 May 2010 until its dissolution on 2 February 2016 and was a director of One Monday from 9 May 2012. I find that throughout his time as a director, Mr Thomson controlled One Monday's finances and banking arrangements.

126. Mr Thomson gave oral evidence that at some unidentified point early in the history, he had handed control of One Monday over to Mr Barker and Mr Michael Peacock and that Mr Barker was added to the bank account mandate. I reject this evidence. My reasons include these:

    i. Mr Thomson was unable to say when the transfer of control happened. He said it was early in the history. He was then shown an email sent to him on 30 September 2013 referring to an agreement to which One Monday was a party. He said that it was not black and white and that there was a gradual handover period. He was unable to say when control of the bank account was supposedly handed over to Mr Barker. He eventually accepted that he could have been kept informed about payments made to and from One Monday and that he may have had a hand in administering the payments.

    ii. Mr Thomson stated on a CV to be sent to the FCA in October 2016 that he was the managing director of One Monday. When confronted with this document he said in cross-examination that it would have been an old CV on file which Mr Huisamen had attached to an email. But he was then taken to an email dated 11 October 2016 which he sent to Mr Huisamen with the draft CV attached and which showed that he, Mr Thomson, had recently drafted the CV. The CV described him as the managing director of One Monday. I concluded that Mr Thomson's evidence about the CV was deliberately misleading.

    iii. Mr Thomson's name was also referred to in a form provided to the FCA dated 16 October 2016 which stated that he was a director of One Monday. He signed the form. I reject Mr Thomson's evidence that this was filled out by Mr Huisamen and that he signed it without reading it. I reject Mr Thomson's evidence that he had

been so casual: the form said that giving false information to the regulator could be a criminal offence. I find that he knew that it was sent in this form.

iv. Mr Barker was never placed on the banking mandate for One Monday (whereas Mr Thomson was).

v. I find it probable that both Ms Nicola Wiseman (who worked with Mr Thomson) and Mr Thomson attended a meeting with the Bank of Scotland in July 2014 to discuss various banking arrangements and at which getting Mr Thomson a debit card for the One Monday account was discussed. The email dated 21 August 2014 sent to Mr Thomson and Ms Wiseman by the BoS employee referred to a meeting the previous day and specifically identified some actions for "Nicky". This suggests that the meeting was with them both.

vi. There would in any case have been no reason for the separate debit card for Mr Thomson if he were no longer involved with One Monday. Mr Thomson could not explain this in cross-examination.

vii. Ms Wiseman kept Mr Thomson informed about One Monday's finances at least into 2014.

viii. Mr Thomson signed the LCF annual report dated 30 April 2015 which stated that he was a director of One Monday. He accepted in cross-examination that he had not by then told the accountants that he had handed over control of One Monday to Mr Barker and Mr Peacock.

ix. Oliver Clive, his accountants, wrote to Mr Thomson in October 2015 about the possible striking-off of One Monday, after the supposed handover of the Company to Mr Barker.

127. I conclude that Mr Thomson's evidence that he had handed over control of One Monday's banking to others (and so lacked knowledge of its affairs) was a deliberate lie, which he told to distance himself from the damaging evidence that One Monday had been used as a conduit for paying a large proportion of the additional deposits made by Sanctuary investors to himself, Mr Golding, Mr Hume-Kendall and others; rather than it being used for the development of The Hill.

128. I am satisfied that Mr Thomson knew that some £1.2 million of the additional deposits received from the Sanctuary investors was transferred from Sanctuary PCC's client account with Buss Murton to One Monday and that One Monday made the payments already identified. I also find that Mr Thomson knew that these payments made to the various individuals (or their companies) of parts of the additional deposits was contrary to the interests of the Sanctuary investors. He also knew that the investors had been led to believe that the additional deposits would be applied in the further development of the land.

129. As to the involvement of Mr Golding in the dealings with Sanctuary, I am satisfied that:

i. Mr Golding's brother, Ryan, had been involved in Sanctuary from the outset. This is probably how Mr Golding became involved. Mr Golding participated in

formulating the rescue package and its terms. The documents show that he was also aware of the trust arrangements involving El Cupey.

ii. Mr Golding knew that additional deposits paid by Sanctuary investors who had agreed to the rescue package amounted to c. £2.4 million and that c. £88,000 was payable each month in interest payments.

iii. Mr Golding knew that Mr Marshall's draft valuation of The Hill was for US$7.3 million and that this was lower than had been anticipated as the value for the site.

iv. Mr Golding and Mr Hume-Kendall decided not to proceed with the purchase of plots making up The Beach and that Tenedora therefore acquired no interest in land in that site before 2017.

v. Mr Golding received £535,000 from Sanctuary via One Monday and Clydesdale Property Developments. He knew that this money was not being invested in the land, as had been promised to investors.

vi. By May 2014 (and probably earlier), Mr Golding and his family were the beneficial owners of 71.25% of the shares in Sanctuary PCC. He probably had a beneficial interest in Sanctuary on the earlier dates when Mr Thomson acquired legal title to shares in it.

130. As to the involvement of Mr Sedgwick, I am satisfied that:

i. Mr Sedgwick arranged for payments to be made from LCCL to Sanctuary via Sustinere.

ii. Mr Sedgwick knew of the creation of a rescue package by Mr Thomson and Mr Hume-Kendall as directors of Sustinere, and of the terms of the rescue package.

iii. Mr Sedgwick managed the receipt of additional sums of c. £2.4 million paid by the Sanctuary investors under the terms of the rescue package. These were paid into Sanctuary's client account with Buss Murton.

iv. Mr Sedgwick wrote to the Sanctuary investors setting out the terms of the revised agreement (which was with Inversiones) and enclosing a new contract. He was therefore aware of the terms of the revised contracts with the Sanctuary investors. I find that he knew that the investors were given the impression that the additional deposits would (at least very substantially) be applied in obtaining planning permission and developing the land; and that investors were not told that a large portion of their money would immediately be paid out to those interested in the shares in Sanctuary.

v. Mr Sedgwick made payments from Sanctuary's client account with Buss Murton to One Monday, Sustinere and LV Management (which I find he knew was Mr Hume-Kendall's company). I am satisfied that Mr Sedgwick knew that this was contrary to the impression given to the Sanctuary investors.

vi. Mr Sedgwick also made payments from Sanctuary PCC's client account to Mr Russell-Murphy. He therefore knew of the amount of the commissions being paid to Mr Russell-Murphy.

vii. Mr Sedgwick engaged in setting up the trust arrangements by which Sanctuary PCC held its shares in Inversiones on trust for El Cupey. Mr Sedgwick witnessed Mr Thomson's signature on the trust deed dated 30 July 2013 and executed by Sanctuary PCC and El Cupey; and sent the signed trust deed to Messrs Thomson, Hume-Kendall and Andrew Visintin. He was also aware of the subsequent continuations of those trust arrangements. Mr Sedgwick was also involved in preparing a further trust deed by which Buss Murton Nominees agreed that it would hold the share in El Cupey on trust for the Sanctuary investors. Mr Sedgwick knew, because of his involvement in the El Cupey trust arrangements, that Sanctuary PCC itself did not have any equity in the land.

viii. Mr Sedgwick also knew that c. £88,000 was payable each month in interest payments to the Sanctuary investors, and that the potential liability of Inversiones to the Sanctuary investors was c. £23.5 million.

Paradise Beach

131. The next asset to address was called Paradise Beach. This was a resort in Cape Verde. It was owned by a company called Paradise Beach SA. A company called Stirling Mortimore had a purchase contract and agreed to assign its position to CV Resorts, the intended purchaser (a company associated with Mr Golding, Mr Hume-Kendall and others). By a contract with Paradise Beach SA executed on 13 April 2015, CV Resorts agreed to pay various sums for phases of the development. The constituent elements and payment instalments required CV Resorts to pay c. €57 million (c. £41 million at the then exchange rate) to acquire the resort.

132. In closing submissions, Mr Sedgwick contended that 30% of the price had already been paid by the date of the contract because CV Resorts took over the deposits that had been paid by the previous purchaser. He did not however give evidence and his assertion could not be evaluated in cross-examination. On the documents and evidence before the court (including (a) the contracts in fact signed with Paradise Beach SA in April 2015, (b) the revised contract of May 2016: see below and (c) a spreadsheet circulated by Mr Sedgwick, which said that the only amount deemed to have been paid was c. €184,000) I am satisfied that €57 million was payable.

133. In August 2015 Savills advised Mr Thomson that the market value of the site was c. €40.5 million. Savills also advised that the "worth value" (the value to the owner or prospective owner such as for investment purposes) was €56.72 million.

134. In light of Savills' valuation, the right to acquire Paradise Beach with a market value of €40.5 million for a price of €57 million was therefore worthless. Mr Thomson (who had been given a preliminary opinion of value by Savills in July 2015) said in an email dated 20 July 2015 that they would be "overpaying by quite a margin".

135. It will also be noted that Savills sent an email to Mr Thomson on 26 August 2015 which said that with a reduced marketing period (and other negative assumptions) the site would have a market value of €17.6 million.

136. In the event, none of the land at Paradise Beach was actually acquired. There remained simply a contractual right to acquire the site on paying the sum of €57 million.

137. As things transpired CV Resorts failed to pay the instalments due under the contract and this led to a legal dispute with Paradise Beach SA. Paradise Beach SA wrote a letter on 19 November 2015 claiming that CV Resorts was in breach of contract. It said that if CV Resorts did not remedy all its breaches, the contract would be terminated.

138. This dispute continued and ultimately it resulted in an agreed variation to the terms of the purchase agreement in May 2016, which postponed the dates for the payment of the instalments. The total price remained €57 million.

139. CV Resorts again failed to pay the instalments, and the dispute with Paradise Beach SA was revived. This continued during 2016 and into 2017. Paradise Beach SA gave notice terminating the contract in June 2017.

140. I am satisfied that CV Resorts never acquired Paradise Beach and that the right to acquire the site did not have any value.

141. Mr Thomson was a director of CV Resorts between 23 January 2015 and 15 August 2015 and was therefore a director at the time at which CV Resorts entered into the contract with Paradise Beach SA.

142. I find that Mr Thomson participated in arranging the Paradise Beach deal, along with Mr Hume-Kendall, Mr Golding, Mr Sedgwick and Mr Ingham. He met the beneficial owners of Paradise Beach SA, Messrs John and Ned Cotter. He accepted in his witness statement that he "had some hand in" making a working financial model of the estimated values of the properties. He attempted to downplay this somewhat in cross-examination, but I conclude it is likely that he was involved. He obtained the valuation of the site from Savills. As one of the two directors of CV Resorts, he was included with Mr Hume-Kendall in communications relating to the drafting of the agreement with Paradise Beach SA.

143. As already explained, Mr Thomson therefore knew that the market value of the Paradise Beach site was substantially less than the €57 million that CV Resorts was required to pay to acquire it.

144. Mr Thomson was also given a copy of the variation agreement of May 2016, which maintained the €57 million price. I am satisfied that he was aware of the dispute between CV Resorts and Paradise Beach SA and knew that CV Resorts had not paid any of the sums due under the contract.

145. By an email of 6 February 2017, Mr Sedgwick informed a Cape Verde lawyer that LCF "are ready to provide the €2 million to purchase the first set of units but they require proper security". It is probable that Mr Sedgwick had previously discussed this with Mr Thomson. I am satisfied that this shows that Mr Thomson was aware that, by that date, no units had been acquired. Mr Thomson also knew that CV Resorts had still not completed the purchase of any of the units at Paradise Beach by 21 April 2017 from an email to Alex Lee, copied to Mr Thomson, saying, "CV Resorts does not at the moment have any property in its name only the contracts to acquire the land in the Cape Verde". Mr Thomson said he could not remember this email in his oral evidence. I consider it likely that he read this and other emails as a matter of practice as they affected the security given to LCF.

146. Mr Thomson said in his evidence that he thought CV Resorts was in fact buying units. There was no contemporaneous evidence supporting that and the emails just referred to show that he knew until at least until mid-2017 that no units had been bought. He was unable to explain these, other than to say that he did not read emails unless the subject line showed he had to. I have rejected this evidence.

147. No units were in fact purchased and the contract was terminated by the sellers in June 2017. I find it inherently improbable that any of the people then involved would have lied to him about this. I conclude that his oral evidence that he thought that units had been bought at some stage was deliberately untruthful.

148. I am also satisfied that Mr Thomson knew that CV Resorts never acquired any interest in the Paradise Beach resort (other than the right to buy it for substantially more than its market value).

149. Mr Golding was also involved in arranging the Paradise Beach deal, along with Mr Thomson, Mr Hume-Kendall, Mr Sedgwick and Mr Ingham. Mr Golding knew that CV Resorts had defaulted under the agreement because he was forwarded the letters dated 19 November 2015 and 15 February 2016 from Paradise Beach SA in which the defaults of CV Resorts were set out.

150. The first of these letters was forwarded by Mr Sedgwick to Mr Barker who, it is to be inferred, passed it on to Mr Golding. I find that Mr Barker generally communicated his knowledge of material events to Mr Golding. Mr Barker was Mr Golding's right-hand man and functioned as his nominee in holding shares. Mr Golding had been disqualified as a director and sought to keep his involvement in the various companies hidden.

151. The second letter concerning the dispute with Paradise Beach SA was forwarded directly to Mr Golding by Mr Sedgwick. On 23 February 2016 Mr Golding received an analysis prepared by Mr Sedgwick of the claims made against CV Resorts by Paradise Beach SA.

152. Mr Golding was then involved in discussions with John and Ned Cotter to resolve the dispute and authorised the entry by CV Resorts into the variation agreement in May 2016.

153. Mr Golding knew that the revised purchase agreement did not complete. He was for instance copied into an email dated 10 November 2016 from Mr Hume-Kendall to John Cotter in which Mr Hume-Kendall sought an extension to the completion dates. In this email, Mr Hume-Kendall noted that "the price in contemplation is far in excess of an open market sale". I find that Mr Golding knew that CV Resorts never completed the purchase of a single unit at Paradise Beach and that this was the reason that Paradise Beach SA terminated the contract on 7 June 2017. By an email of 7 June 2017, Mr Hume-Kendall forwarded to Mr Golding the notice of termination saying, "As you anticipated!". Mr Hume-Kendall and Mr Golding must therefore have been discussing the prospect before this happened.

154. Mr Sedgwick participated in arranging the original Paradise Beach deal, along with Mr Hume-Kendall, Mr Golding, Mr Thomson and Mr Ingham. In February 2015, Mr Sedgwick was engaged in drafting an agreement by which Stirling Mortimer would assign its rights in relation to Paradise Beach to CV Resorts. This led to the agreement of April 2015.

155. Mr Sedgwick was therefore aware of the terms of the agreement. Mr Sedgwick subsequently summarised the payments due under the agreement in a spreadsheet for Michael Peacock.

156. Mr Sedgwick knew that CV Resorts had defaulted under the agreement because he received the letters dated 19 November 2015 and 15 February 2016 from Paradise Beach SA in which the defaults of CV Resorts were set out. He forwarded the first of these letters to Mr Hume-Kendall and Mr Barker and the second to Mr Hume-Kendall, Mr Barker and Mr Golding. On 23 February 2016 Mr Sedgwick conducted an initial analysis of the claims made against CV Resorts by Paradise Beach SA and sent it to Mr Hume-Kendall, Mr Barker and Mr Golding. Mr Sedgwick acted in the dispute for CV Resorts and drafted correspondence with Paradise Beach SA. He was also involved in the variation agreement by which this first dispute was resolved in May 2016. On 10 October 2016 Mr Sedgwick sent an email, copied to Mr Hume-Kendall, Mr Barker and Mr Ingham, in which he explained that no purchases of units at Paradise Beach had completed. It attached a summary of the outstanding payments due.

157. On 10 November 2016 Mr Sedgwick drafted an email for Mr Hume-Kendall and Mr Barker to send to John Cotter, seeking to dissuade Paradise Beach SA from terminating the contract. On 12 January 2017 Paradise Beach SA agreed to allow CV Resorts until 1 February 2017 to remedy its breaches. Mr Sedgwick forwarded these letters to Mr Hume-Kendall and Mr Barker. When CV Resorts did not remedy its breaches, on 6 February 2017, Mr Sedgwick sought advice from a lawyer qualified in Cape Verde law. He explained that "we are of the view that the price being paid for the site is too high and wish to persuade them to accept significantly less" and that LCF was ready to provide €2 million. Mr Sedgwick knew that CV Resorts never completed the purchase of any of the units at Paradise Beach and that this was the reason that Paradise Beach SA terminated the contract on 7 June 2017.

The Lakeview resort

158. The next relevant asset is the Lakeview resort. This was a holiday resort in Bodmin, Cornwall, which contains lodges. The site had an area of about 95.8 acres. The property was developed in the late 1980s and opened in 1991.

159. The site was acquired by Lakeview Country Club Limited ("LCCL") in 2012.

160. At that date, 36 lodges were let on 999-year leases to third parties; 24 lodges were let to a timeshare club, Lakeview Title Limited, and the remaining lodges were owned outright (including a lodge used as a service lodge). The site comprised 4 one-bedroom lodges, 42 two-bedroom lodges, 5 two-bedroom bungalows, and 18 three-bedroom bungalows. There was also an owner's house and a clubhouse.

161. Before the LCCL acquisition, the Lakeview site was owned by Vernon Knight Associates ("VKA"), which was a trading partnership between Mike and Penny Vernon. VKA's bank, Barclays, sought early repayment of VKA's borrowing.

162. VKA agreed to sell the Lakeview site to a company called Telos (IOM) Limited, a company incorporated in the Isle of Man, for £1.98 million. Telos accepted investments from 136 investors in the sum of c. £6.4 million for the purchase and development of the

Lakeview site. Telos failed, however, to pay the purchase price and it forfeited its deposit. The sale to Telos therefore fell through.

163. Mr Hume-Kendall and Mr Golding decided to purchase the Lakeview site, using LCCL. The proposed price was initially £4.5 million, mostly consisting of deferred consideration. Mr Hume-Kendall said in an email of 28 November 2012 to Mr Golding that they all agreed this to be way in excess of what the property and business were worth. Mr Hume-Kendall and Mr Sedgwick engaged in renegotiating the price downwards. Negotiations followed in which the price was reduced. Eventually the buying company, LCCL, exchanged contracts with the vendors to acquire the site for £2.75 million. Before completion, there were further renegotiations regarding the price, resulting in a variation agreement. LCCL ultimately acquired the Lakeview site for £1.525 million.

164. Mr Thomson and Mr Hume-Kendall approached the Telos investors with a proposal to raise money to finance some of the purchase price. Mr Clint Redman assisted them. The proposal was presented to Telos investors in roadshow meetings. They proposed that Telos investors would loan sums which would be repayable with interest at 8% per annum and that 10% of the proceeds of an eventual sale of Lakeview (in due course) would be held by a trust for the benefit of the Telos investors. A large number of the Telos investors took this up and paid a total of £728,672.88.

165. This left the need to raise other completion sums. The bulk was obtained from Ortus, a bridging lender, which made a secured loan of £800,000 to LCCL, guaranteed by Mr Thomson, Mr Hume-Kendall and Mrs Hume-Kendall.

166. The sale of the Lakeview site to LCCL completed on 5 April 2013. The total consideration paid was c. £1.6 million, consisting mainly of sums borrowed from Ortus and the Telos investors.

167. Over time, LCCL and associated companies bought back a number of the lodges not previously owned. Four of these purchases occurred before January 2015.

168. The site was transferred to Waterside Villages Plc in late 2015. The buy-back of lodges picked up after that, and Waterside Villages accepted the surrender of the timeshare clubs’ 24 leases in return for a payment of £762,000.

169. The Claimants have compiled a table based on Land Registry documents which shows the dates at which various lodges were acquired and the prices paid for them. In the end, 60 of the 69 lodges were owned by LCCL and related companies.

170. At the roadshow to the Telos investors, Mr Thomson participated in preparing a presentation to the Telos investors which set out the proposed development of the Lakeview site, including the construction of a 105-bedroom hotel and the various options available to the Telos investors, and in drafting a letter to the Telos investors, which he asked Mr Sedgwick to review.

171. There was a spreadsheet prepared by Mr Peacock which showed that the total sum raised from the Telos investors was £728,572 and that the annual interest due to the Telos investors was c. £58,000. Mr Thomson accepted in evidence that he probably saw this at the time, and I so find.

172. I turn to the evidence about the value of the site. As already explained LCCL bought the site for c. £1.6 million in April 2013.

173. In January 2013 a firm of surveyors, GVA, valued the Lakeview site for LCCL. GVA put the market value of the freehold at £4.65 million. This valuation correctly noted that 36 of the lodges were subject to long leases and 24 of the lodges were subject to timeshare agreements. The report said there was planning permission for a new development to include 36 further holiday lodges and a 105-bedroom hotel, and that LCCL did not intend to proceed with the hotel but assumed that the further 36 new lodges could be developed. The valuation included an element of value which would be generated by such development, and for the resale value of other lodges bought back in and re-sold.

174. In July 2013 GVA produced a valuation for Ultimate Capital Limited ("Ultimate Capital"), a lender to LCCL. This gave the Lakeview site a market value of £4.5 million, which decreased to £3.6 million if the marketing period was assumed to be restricted to 180 days. The valuation noted that 36 of the lodges were subject to long leases and 24 of the lodges were subject to timeshare agreements.

175. Savills produced a valuation for LCCL in April 2014. This estimated the market value of the Lakeview site at £4 million, rising to £4.125 million if a tie restricting occupation of the Manor House to an owner or manager of the site were to be lifted. This valuation incorrectly stated that there were 11 lodges owned by LCCL, when in fact at this point LCCL owned only 9 lodges, of which one was a service lodge. The report explained that information had been provided by Mr Thomson, Mr Redman and Mr Ingham. Savills had seen the GVA report of January 2013. They had also been given additional information by Mr Thomson and Mr Hume-Kendall.

176. GVA produced a further valuation dated December 2014 for International Resorts Group plc, marked for the attention of Mr Thomson. It assessed the market value as at 11 April 2014 at £12.4 million on the special assumption that "the proposed business plan" would be achieved in full and without delay. It also gave the market value without this assumption of £7.15 million. The business plan included the development of a 105-bedroom hotel. The proposed hotel would have cost some £19 million plus professional fees, and the new lodges an additional £4.3 million plus fees. The business plan cashflow made the assumption that build costs would start immediately, including on the new lodges, with the hotel construction starting seven quarters later. It also envisaged the buyback programme starting immediately. I find that Mr Thomson knew that the proposed business plan had not been commenced and was not about to start. Therefore, the £12.4 million figure was of negligible use.

177. The valuation was also based on an inaccurate assumption that LCCL already owned 26 lodges. It actually owned only 9 lodges, of which one was a service lodge. The report stated that IRG had advised it that LCCL had bought in these extra lodges and that the purchase had completed. I am satisfied that Mr Thomson knew that this assumption about the number of lodges in hand was wrong. He was intimately involved in the affairs of LCCL at the time. The report was addressed to him, and it is likely that he was at least one of the principal providers of information to GVA. This is consistent with the fact that Savills said in their 2014 report (above) and their further report of January 2015 (see below) that Mr Thomson and Mr Hume-Kendall had provided them with information between October 2013 and January 2015.

178. Savills produced a further valuation for LCCL dated 17 January 2015, addressed to Mr Thomson. Its conclusions as to the market value of the Lakeview site were unchanged from its 2014 report. It said that Mr Thomson and Mr Hume-Kendall had provided Savills with information up to January 2015. As with its earlier report, Savills based its valuation on there being 11 lodges owned by LCCL.

179. GVA produced another valuation dated 29 January 2015 for Ultimate Capital Limited which held security over the Lakeview resort. This report assessed the market value as at 12 January 2015 to be £4.5 million, reduced to £2.6 million if the sale period was limited to 90 days. The valuation reported that LCCL owned 8 lodges.

180. Another valuer, John Spacey, conducted some valuations of the Lakeview resort.

181. In December 2016, Mr Spacey, trading as Porters Intrinsic Valuations, produced four reports for LCF on the value of different components of the Lakeview resort, which in total gave the market value of the Lakeview resort as £15.03 million. Of this figure, £9.36 million was attributable to the value of the lodges. Mr Spacey assigned 3-bedroom lodges, of which he recorded 17, a value of £180,000 and 2-bedroom lodges, of which he recorded 45, a value of £140,000. I find that these values were substantially above the prices at which lodges had been sold in a number of open market transactions. I find that Mr Thomson did not regard it as an accurate view of the value of the site.

182. On 1 December 2017 Mr Spacey, now trading as The Cobbs Consultancy, sent Global Resort Properties Limited an updating letter in which he stated the value of the Lakeview resort had risen to £22.6 million. He referred to a meeting with Mr Hume-Kendall and his colleagues. Of this figure, £13.6 million was due to the value of the lodges. Mr Spacey recorded that there were 69 lodges, of which 7 were 2-bedroom lodges valued at £200,000 each and 62 were 3-bedroom lodges valued at £250,000 each. Again, I find that these were significantly higher than open market sales at around the same time. In addition, the report erroneously increased the number of 3-bedroom lodges and decreased the number of 2-bedroom lodges. Mr Spacey had also increased the value of the development land from £1.5 million in December 2016 to £4.5 million a year later. This letter was not a Red Book valuation but was an updated appraisal. I find that Mr Thomson did not regard it as an accurate view of the value of the site.

183. The figures in the letter of 1 December 2017 assumed that refurbishment work had taken place. I find that some limited works had taken place by then, but an email of 6 April 2018 from Mr Terry Mitchell to Mr Hume-Kendall states that "the valuation is based on the lodges being refurbished whereas they may not be completed until end [of] May … subject to availability of vacant lodges". I find that it is likely that the refurbishment was not completed until October 2018.

184. On 7 June 2018 Mr Spacey sent Mr Mitchell at Prime RDL a further letter updating the letter of 1 December 2017. He said that the value of the Lakeview resort had risen to £33,199,350. He referred to a proposed development of 113 new lodges. He placed a value of some £11.8 million on this part of the land (up from £4.5 million in his previous letter). The existing lodges were now valued at £17.355 million. Mr Spacey now valued 7 x 2-bedroom lodges (at £240,000 each) and 57 x 3-bedroom lodges (at £275,000 each). The increase in value since 1 December 2017 is not explained, and nor is the different number and configuration of the lodges.

185. The Lakeview site was sold by the LCF Administrators on 28 April 2022 for £10.1 million, following an extensive marketing process. This was very substantially lower than any of Mr Spacey's valuations.

186. As to the role of Mr Thomson in relation to the Lakeview site, he was appointed a director of LCCL on its incorporation on 18 December 2012. Mr Thomson was a witness on a declaration of trust dated 19 December 2012 by which Buss Murton (Nominees) Limited agreed to hold the single share in LCCL on trust as to 71.25% for Mr Golding and his family, 23.75% for Mrs Hume-Kendall and 5% for Mr Thomson.

187. As already explained, Mr Thomson participated in the roadshow to Telos investors to raise funds for the completion of the purchase of the Lakeview site. He accepted in oral evidence that he was involved in the preparation of a PowerPoint presentation setting out the proposed development of the Lakeview site (including the construction of a 105-bedroom hotel) and the options available to the Telos investors. Mr Thomson also accepted in his oral evidence that he was closely involved in the production of a letter to the Telos investors which also set out the options open to them. I find that he knew the amounts raised from them (£728,552.88) and what the annual interest due to them was (c. £58,000).

188. On 20 December 2012 Mr Thomson signed the sale and purchase agreement for the land on behalf of LCCL. In March 2013, following the renegotiation between the parties, Mr Thomson also signed the supplemental agreement, which decreased the price to £1.525 million. On 5 April 2013 Mr Thomson signed a facility agreement in the sum of £800,000 with Ortus to obtain bridging finance for the purchase of the Lakeview site. Mr Thomson, along with Mr Hume-Kendall and Mrs Hume-Kendall, also signed the facility agreement as a guarantor.

189. Mr Thomson knew at the time at which the Lakeview site was acquired the number of lodges and how they were then owned (in hand, long lease or timeshare).

190. Mr Thomson was also involved in arranging refinancing of the Ortus debt. It refinanced with a loan from Ultimate Capital. Mr Thomson knew that Ultimate Capital had obtained a valuation of the Lakeview site in July 2013 from GVA. He accepted in evidence that he would have seen it at the time, and he was therefore aware of that valuation.

191. Mr Thomson instructed Savills to provide a valuation of the Lakeview site. Savills addressed its report to Mr Thomson. Mr Thomson was familiar with the content of this report and knew the quantum of the Savills valuation.

192. Mr Thomson accepted in his oral evidence that he would have seen the valuation of the Lakeview site obtained for Ultimate Capital from GVA in January 2015.

193. Mr Thomson knew of the GVA valuation produced for IRG in December 2014 and was aware that the value of £12.4 million contained in this valuation was based on the special assumption that the business plan, which included the development of a 105-bedroom hotel, would be achieved in full and without delay.

194. I am satisfied that Mr Thomson knew that this overstated the value of the site. First, he knew that it was based on LCCL owning 26 lodges. At the time he was heavily involved in the buyback programme. He was the addressee of many of the emails about the

programme. Though he denied in oral evidence that he was aware of the details of it, I reject this. The email record shows that he was intimately involved. I also find that he would have noticed the number of lodges that were being valued in the December 2014 report. The contemporaneous documents show that Mr Thomson was seeking to explain the contents of the GVA report to third parties so that they would accept that that the Lakeview site should be valued at £12.4 million. These establish that he had read the report reasonably carefully. I also find that the instruction to GVA as to the number of lodges to include in the valuation was likely to have come from Mr Thomson himself.

195. I also find that Mr Thomson knew that the business plan referred to in the GVA valuation report had not been achieved or was not about to be achieved in full and without delay and, in particular, that a 105-bedroom hotel had not been built (and was not imminently to be started) at the Lakeview site. Mr Thomson sought in his evidence to suggest that it did not matter that the work had not actually been carried out, as long as it was going to be carried out at some date. I do not accept that. As explained above, the business plan assumed that construction and the extensive buy-back programme would both start immediately (in Q1 of the anticipated timeline in the cashflows) and Mr Thomson knew that neither was imminent. He knew that LCCL did not have the funding to carry out those steps. I reject Mr Thomson's evidence that he thought that simply because there was a development plan the market value was £12.4 million. That gives no meaning to the important assumption that the plan was to be achieved in full and without delay.

196. As to Mr Spacey's valuation of Lakeview, I find that Mr Thomson knew that the actual sales of lodges had been very significantly lower than Mr Spacey's assumptions. I reject his evidence that he did not know the value of the sales. As already explained, he had been intimately involved in the buy-back and sales process. He also knew that the number and configuration of the lodges in the report was wrong. I also note that Mr Thomson said in evidence that he had never met Mr Spacey and that the report had been produced at the behest of Mr Hume-Kendall and Mr Golding. I find that he did not think that it represented the value of the site.

197. As to the involvement of Mr Golding in relation to the Lakeview site, Mr Golding appears to have been the main proponent of the purchase. Mr Hume-Kendall seems to have been the public face of Mr Golding's involvement. Mr Hume-Kendall routinely forwarded emails regarding the proposed acquisition of Lakeview to Mr Golding. The emails show that Mr Golding was actively involved in internal discussions regarding the proposed renegotiation of the price. Mr Golding was involved in raising sums from the Telos investors. Mr Beal, a finance broker, was under the impression that the bridging finance to acquire the Lakeview site was "the finance required for Spencer". Following the acquisition, Mr Golding became the majority owner of the Lakeview site, via his beneficial interest in LCCL. Mr Golding was the person who had overall control of LCCL.

198. Mr Golding, therefore, knew how much LCCL paid for the Lakeview site (c. £1.6 million). Mr Golding was also involved in the instruction of Savills to produce a valuation of the Lakeview site. He must therefore have known about the quantum of that valuation. The contemporaneous emails (e.g. one of 6 June 2013) show that Mr Sedgwick and Ms Baldock understood Mr Thomson to be Mr Golding's employee. In oral evidence, Mr Thomson rejected the suggestion he was Mr Golding's employee but acknowledged that he represented Mr Golding's interests in LCCL. As explained above, Mr Thomson held Mr Golding's shares on trust for him. I find that he acted in accordance with Mr

Golding's instructions concerning LCCL. I am also satisfied that it is proper to infer that, as Mr Golding's representative, Mr Thomson would have kept Mr Golding informed of significant developments concerning the Lakeview site.

199. As to the involvement of Mr Sedgwick concerning the Lakeview site, he was instructed by LCCL to deal with the purchase of the Lakeview site from VKA. He knew the details of the negotiations and the eventual purchase. The documents establish that Mr Sedgwick principally received instructions from Mr Hume-Kendall but knew that Mr Golding was also interested in the acquisition. He knew that Mr Golding was the majority beneficial shareholder in LCCL.

200. Mr Sedgwick also knew that Mr Hume-Kendall had negotiated a loan of £200,000 by Geoffrey Hunt and John Banks, the directors of Telos, to pay the deposit for the purchase. Mr Sedgwick drafted an undertaking from Bewl Holiday Homes LLP that Mr Hunt and Mr Banks would be repaid from the proceeds of sale of Hook House, a property in which Mrs Hume-Kendall was interested. Ultimately Buss Murton gave such an undertaking to Mr Hunt and Mr Banks. The £200,000 arrived in Buss Murton's client account and Mr Sedgwick instructed that it be paid to the vendors' solicitors.

201. Mr Sedgwick incorporated LCCL, which was to act as the purchasing entity, on 18 December 2012. He was appointed the company secretary of LCCL on the same date.

202. Mr Sedgwick sent the execution version of the purchase agreement to Mr Hume-Kendall, Mr Andrew Visintin and Mr Thomson. Mr Sedgwick witnessed Mr Thomson's signature of this agreement on behalf of LCCL and sent the signed copy to the vendors' solicitors. Mr Sedgwick then sent the purchase agreement executed by the vendors to Mr Thomson and Mr Hume-Kendall. Mr Sedgwick also knew of the revised agreement and the ultimate purchase price paid on completion.

203. Mr Sedgwick knew that Mr Redman and Mr Thomson were trying to engage with Telos investors via a roadshow in early 2013, and he was involved in the communications with the Telos investors. Mr Sedgwick assisted Mr Thomson in drafting a letter to the Telos investors which set out the options open to them. The Telos investors who signed up to the revised offer made payments to Buss Murton's client account. Mr Sedgwick had control of the account into which these payments were made and kept Mr Thomson and Mr Hume-Kendall informed of such payments. Mr Sedgwick knew that by 26 March 2013 LCCL had received £230,470.17 from the Telos investors because he set out the payments received in a spreadsheet; he knew that by 4 April 2013, £518,802.47 had been received from the Telos investors; and he knew that by 4 July 2013, £728,572.88 had been received from the Telos investors. The same documents show that he knew that LCCL was liable to pay interest to the Telos investors, in an amount of £58,293 per year.

204. Mr Sedgwick knew that bridging finance was required to complete the purchase. One of the potential providers was Ultimate Capital. On 4 July 2013 Mr Sedgwick told Ultimate Capital that the Telos investors had provided approximately £800,000. I find that this was an overstatement of the true position, and that Mr Sedgwick knew the true figure, given his knowledge of the state of the Buss Murton client account.

205. Mr Sedgwick also told Ultimate Capital that the shareholders of LCCL had provided "funding in the region of £800,000". I find that this was not true because the purchase

price was £1.525 million and the deposit had been funded by way of a loan from Mr Banks and Mr Hunt.

206. In the event, bridging finance was provided by Ortus. Mrs Hume-Kendall was added to a draft Ortus guarantee on 3 March 2013. It is to be inferred that this was based on information provided to Ortus by Mr Sedgwick. However, Mr Sedgwick had actually done this on the instructions of Mr Hume-Kendall, because when Mr Sedgwick met Mrs Hume-Kendall on 3 April 2013, she "had not fully appreciated" that she was to be providing a guarantee to Ortus (email of 3 April 2013 from Mr Sedgwick to one of his colleagues).

207. Mr Sedgwick knew that Ortus had provided £747,157 of the sums due on completion and that LCCL had provided £377,578.38. Mr Sedgwick also knew that the total sum paid by LCCL, including the deposit and compensation payments for the delays to completion was £1.6 million.

208. Mr Sedgwick was therefore intimately involved in the various stages of the acquisition and obtaining bridging finance by LCCL. He was also appointed as the company secretary. He was also intimately involved in the lodge buyback programme. In the light of this, I find that he was aware of the numbers of lodges held by LCCL from time to time and the values at which they were acquired.

209. I also infer that he was aware of the various valuations of the Lakeview site and the anomalies and shortcomings in them I have already detailed above. This inference is strengthened by the fact that Mr Sedgwick did not give evidence and subject himself to cross-examination and I find (as an adverse inference) that he had knowledge of these various facts.

The launch of LCF (then called SAFE)

210. LCF was incorporated as South Eastern Counties Finance Limited. It was called Sales Aid Finance (England) Limited from 18 February 2013 until it became London Capital & Finance Limited on 1 July 2015 and then London Capital & Finance Plc on 11 November 2015.

211. At incorporation, Mr Hume-Kendall, Mr Paul Sayers, and Mr Peacock were directors. Mr Thomson replaced those individuals and was the sole director from 15 August 2013.

212. The entire share capital of SAFE was initially registered in the name of Mr Peacock. In late 2013 the shares were transferred to and registered in the name of Mr Thomson. He initially held them on trust for Mr Golding under a declaration of trust dated 30 December 2013 (which also covered shares in International Resorts Group). I find that the reason for this trust arrangement was to ensure that Mr Golding (who had given undertakings not to be concerned or take part in the promotion, formation or management of a company) was not recorded as the owner of SAFE at Companies House.

213. Those undertakings were given for a period of eight years from 4 April 2011, in connection with the affairs of Clydesdale Enterprises Limited, which had operated as a timeshare business, and which entered liquidation on 7 April 2009 with assets of zero and a deficiency of £45,000. One of the agreed facts annexed to the undertakings was that Mr Golding had acted as a director of Clydesdale despite having been prevented for

a period of 10 years from doing so under a Bankruptcy Restriction Order made on 20 December 2006.

214. Various other shares in other companies were also held on trust for Mr Golding. These included Clydesdale Property Developments Limited and LCCL. I find that these arrangements were also entered into to conceal his involvement with these companies.

215. I find that Mr Thomson, Mr Hume-Kendall and Mr Barker knew of Mr Golding's disqualification undertakings. As will be explained below, many documents refer to the respective entitlements of Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding in various companies and a reference to Mr Barker was often used as a way of referring to Mr Golding, so that Mr Barker was acting as his proxy or nominee. I find that Mr Thomson, Mr Hume-Kendall and Mr Barker were aware of this practice, as was Mr Sedgwick.

The LUKI bond issue

216. A company called Lakeview UK Investments Limited ("LUKI") was set up by Mr Hume-Kendall and Mr Golding to issue bonds to raise sums to develop the Lakeview site. This project was worked on by Mr Thomson and Mr Hume-Kendall.

217. In an email of 1 July 2013 to Hypa Management, Mr Hume-Kendall explained that "we" currently own the Lakeview site and that the intention was to raise £20 million to be spent in developing a hotel and new lodges and buying up to forty leasehold and timeshare lodges. Mr Hume-Kendall forwarded the email to Mr Golding using the name "John Smith". The "advisor and manager" was going to be SAFE (as shown by an agreement dated 29 November 2013). This put the sums to be raised at £17 million. SAFE was to advise LUKI about whether it should loan sums to LCCL, determine the value of the assets provided by LCCL as security, and monitor the use of the funds advanced to LCCL. The sums raised were to be used to develop the site. This was explained in an Offering Memorandum dated 12 September 2013. The bonds offered were 5-year bonds paying 11% interest. The bonds were non-transferrable (i.e. were mini-bonds).

218. The LUKI bond was Mr Thomson's first experience of a bond issue.

219. The issuance of the LUKI bond was only partially successful: only c. £3.9 million was raised by mid-2015, and c. £5.1 million by mid-2016.

220. As explained further below, the Lakeview site was transferred to Waterside Villages Plc in mid-2015, and LCCL retained the land called the "development land", which was charged by way of security for LUKI's liabilities to investors under the bond issue. However, the development land was valued at only £1.53 million in December 2016 (assuming that Mr Spacey's valuation of this element of the site was reliable), so that there was insufficient security for the liabilities to the LUKI investors.

The SAFE Bonds

221. Mr Hume-Kendall resigned as a director of SAFE on 15 August 2013. Shortly before this he was planning a new business venture for SAFE as the issuer of bonds, with Mr Golding and Mr Russell-Murphy. Mr Hume-Kendall explained in an email dated 13 August 2013 to Mr Russell-Murphy (copied to Mr Golding as "John Smith") that the bond issue would

be backed by the two existing sites owned in the UK and the Dominican Republic, which he said were worth around US$200 million, following development. He said this had been assessed by major independent professional firms. He offered Mr Russell-Murphy a 5% share (worth US$10 million) if he was able to raise at least £3 million on the bonds in the next 12 months and assist with other ventures including a timeshare bond. The email was called a draft agreement and was signed "S and S" (i.e. Mr Hume-Kendall and Mr Golding). I am satisfied that, as this email shows, Mr Golding and Mr Hume-Kendall were both involved in the strategic direction of SAFE at that time.

222. In around August 2013 Mr Thomson prepared an information booklet for a loan scheme for SAFE, directed at members of the public, based on lending at an interest rate of 8.5%. Drafts of the booklet (dated 16 August 2013) stated that year-on-year lending in the UK SME sector had slowed dramatically, and that SAFE would provide finance to businesses in that sector. It explained that the directors of SAFE had significant lending/financing experience. Members of the public were invited to loan money to SAFE, which in turn would lend it to SMEs. The booklet stated that all funds would be held in escrow until loan agreements, guarantees, and legal charges were taken.

223. On 20 August 2013 Mr Thomson approached Mr Russell-Murphy and Mr Sedgwick, seeking their input into the draft. Mr Sedgwick had suggested that the draft refer to SAFE providing security of 150% of all money raised. In response, Mr Russell-Murphy noted that "the problem with what is being suggested is that the money may not be lent out in line with what's described in the prospectus ie cash for Simon and Spencer etc". The Claimants invited me to conclude that Mr Russell-Murphy and Mr Thomson knew at that stage that any cash being raised would be for Mr Hume-Kendall and Mr Golding personally. I find that Mr Russell-Murphy was probably referring to raising cash for businesses relating to Mr Hume-Kendall and Mr Golding, and that is how Mr Thomson understood it. But Mr Russell-Murphy was nonetheless highlighting that the existing draft implied that any funds raised would be lent to independent companies in the SME sector, rather than to specific businesses associated with SAFE and its director. I find that Mr Thomson understood this point.

224. A draft of the booklet was also circulated to Mark Ingham and to Mr Hume-Kendall. Mr Hume-Kendall hence remained involved in SAFE's business after his resignation as a director.

225. Drafts of the brochure and a copy of the Loan Note Agreement were also shared with Mr Golding in September 2013. He knew of the terms on which SAFE was seeking to raise money from investors.

226. Further drafts of the proposed bonds were produced. The basic details were unchanged, with interest at 8.5% and asset security of 150%; funds to be lent to SMEs to meet demand for finance in the south-east of England; with SAFE to conduct a financial review of every application prior to making lending decisions. Drafts were circulated between Mr Thomson, Mr Hume-Kendall, Mr Golding, Mr Russell-Murphy and Mr Sedgwick. Mr Ingham was also involved. Mr Russell-Murphy said in an email to Mr Benjamin Beal (a finance broker) on 5 September 2013 that he thought it would be an "easy sell".

227. The brochure was finalised in September 2013. It attached a letter from Buss Murton LLP dated 28 August 2013 (drafted by Mr Sedgwick), explaining that SAFE had the benefit of certain guarantees from companies owned by the stated directors of SAFE. I

find that this statement was untrue and misleading as, first, those companies were not beneficially owned by the stated directors of SAFE and, second, draft guarantees were prepared for some of the directors, but none were actually executed. I am satisfied that Mr Sedgwick knew this, as he sent unexecuted draft guarantees out after the date of the signature on the letter. I draw the adverse inference from his failure to give evidence that he was reckless as to the truth and was prepared to provide a misleading letter to assist in fundraising from the public.

228. Members of the public started to invest in SAFE bonds from 11 September 2013. Mr Russell-Murphy, who was in the financial services advisory business, was paid a commission of 20% of the gross amount raised by him. This increased to 25% in April 2014.

229. I find that Mr Thomson and Mr Hume-Kendall were closely involved in the running of SAFE and were kept informed of the level of bond sales and other developments. For instance, on 10 December 2013 Ms Baldock, a salesperson, wrote to Mr Hume-Kendall about attempts to persuade an investor to invest £40,000. Mr Hume-Kendall sent this to Mr Golding and said, “not good”. On 17 December 2013 Ms Baldock sent details of some inward investments to Mr Thomson, Mr Hume-Kendall and Mr Russell-Murphy. Similar details were sent in emails by Mr Russell-Murphy to Mr Thomson and Mr Hume-Kendall on 18 and 23 December 2013 and by Ms. Baldock on 6 January 2014. Also, on 6 January 2014, Ms Maddock of SAFE sent an email to Mr Thomson, Mr Hume-Kendall and Mr Russell-Murphy about the wording of a certificate to be issued by SAFE.

230. Mr Golding was also kept closely informed about the affairs of SAFE and he participated in strategic decisions and the management of the business. For instance, he made the decision to make a special offer to pay 110% of principal on maturity as well as interest. Mr Thomson then implemented this. Specifically, on 13 December 2013, Mr Thomson said to Mr Russell-Murphy that he understood from “Spence” that Mr Russell-Murphy needed an email from SAFE and that he, Mr Thomson, would organise it. On the same day Mr Russell-Murphy sent an email explaining what he needed, i.e. an email setting out the 110% terminal bonus offer. He copied this email to Mr Hume-Kendall, who was also involved. Mr Thomson duly sent this email to Mr Russell-Murphy. I find that Mr Thomson did what Mr Golding had told him on this point. I find that this episode shows that Mr Golding was keen to raise money from the public as quickly as possible. There is nothing to suggest that either he or Mr Thomson gave any thought to the sustainability of this offer or the ability of SAFE to pay the 10% bonus on top of the interest. I am satisfied that this is because they were wilfully reckless as to the sustainability of the business model and wanted to raise more money at all costs.

231. Members of the public continued to invest in the SAFE bonds during 2013 and into 2014.

Loan to Sanctuary PCC

232. SAFE’s first outward loan was to Sanctuary PCC. Mr Thomson signed the loan application on behalf of Sanctuary as a director. The parties signed a loan agreement dated 1 October 2013 for £675,000. Mr Peacock signed for SAFE.

233. There was also a debenture, though Sanctuary PCC did not have any valuable property. As already explained, Tenedora had not acquired any of the parcels at The Beach and the

benefit of the shares in Inversiones (which held The Hill) was held on trust for the Sanctuary investors.

234. I find that Mr Sedgwick knew of all these facts. He participated in drafting the documentation, including the El Cupey trust. He also knew that Tenedora had not bought any of the parcels of The Beach. He therefore knew that the security offered by Sanctuary PCC had no value.

235. I am satisfied that Mr Golding was aware of the loan agreement and the supposed security. He was involved in the dealings with the Sanctuary investors. He also received money from One Monday which had been borrowed by Sanctuary under the SAFE facility (see below). I infer, based on the evidence about his relationships with Mr Hume-Kendall and others, that he knew that others were probably receiving similar payments from One Monday (see further below).

236. I also find that he knew of the arrangements with the investors including the El Cupey trust arrangements. He therefore knew that Sanctuary PCC's offer of security for the borrowing from SAFE had no value.

237. The money drawn down by Sanctuary PCC under the loan was paid by SAFE to One Monday. The sum of £80,000 was paid on 1 October 2013 (the date of the agreement) and further amounts followed in October and November 2013. As already explained, One Monday was Mr Thomson's company.

238. One Monday used the money to pay Mr Hume-Kendall, Mr Golding and Mrs Hume-Kendall. Hence from the outset of SAFE's business, some of the sums raised from bondholders were being paid to Mr and Mrs Hume Kendall and Mr Golding personally, rather than to the borrower, Sanctuary PCC, for its business purposes. These funds were therefore being disbursed at once and were not being invested in income-generating activities of the borrower. Mr Thomson knew this.

239. Some of the money paid by SAFE to One Monday under the Sanctuary PCC borrowing was paid to a company called Leisure & Tourism Limited, run by Mr Peacock. The bank statements and ledgers for Leisure & Tourism Limited show that these sums were used to meet the monthly interest liabilities of the Sanctuary investors that had been promised to them by Mr Hume-Kendall. Hence part of the money raised from investors in SAFE was being used to pay the interest due to the existing Sanctuary investors on their deposits. Again, these amounts were therefore not being invested in income-generating activities.

240. Mr Thomson and Mr Golding therefore knew that money raised from bondholders and lent to Sanctuary PCC was going either to themselves or to Sanctuary investors (to pay interest) and not being used to develop The Beach or The Hill. They therefore knew that money derived from investors in SAFE was being paid out and was not being invested into income-generating businesses. They had no concerns about this or the impact it might have on the sustainability of the SAFE business. I find that they were recklessly indifferent to the interests of the investors in SAFE.

241. Mr Sedgwick ran the Buss Murton account. He kept Mr Thomson (or his PA) and Mr Hume-Kendall abreast of the arrival of sums from SAFE bondholders, and the payments out of the account to Mr Russell-Murphy, One Monday, and others. Mr Sedgwick

therefore knew that sums purportedly borrowed by Sanctuary were going to Mr Thomson's personally owned company. I find (including by adverse inference) that Mr Sedgwick knew that this part of the money was therefore not being invested in an income-generating business by Sanctuary; he was recklessly indifferent to the interests of the bondholders. I also infer from his control of the client accounts (and failure to give evidence) that Mr Sedgwick knew that the Sanctuary investors' interest payments were being met by Sanctuary PCC from sums borrowed from SAFE (in turn derived from investment by bondholders).

Early involvement of Mr Careless/Surge with SAFE

242. In early 2015 Mr Careless and Ms Venn (then called Kerry Graham) were running a website called The Investment Experts. Members of the public could ask questions about investments. They might say that they had an amount to invest and wanted certain returns. They had to sign in with contact details. Mr Careless and Ms Venn were not themselves investment experts. Their business model consisted of collecting questions from the public and selling these as "leads" to financial advisers, who would follow them up.

243. Surge was incorporated on 19 January 2015. Until 20 June 2017, Ms Venn held all the issued shares, and she was the sole director until 7 July 2017, when Mr Careless became a director. They both gave evidence that Mr Careless was throughout the 90% beneficial owner of Surge and a de facto director, and that Ms Venn owned the other 10% of the shares beneficially.

244. On 25 February 2015 Mr Careless and Ms Venn had a meeting with Mr Hume-Kendall, Mr Golding and Mr Russell-Murphy. The introduction was made by Mr Beal, who was a friend of Mr Careless. He had been working with Mr Russell-Murphy.

245. Before the meeting, Mr Beal provided Ms Venn with the SAFE investment memorandum.

246. Ms Venn made some fairly cursory internet searches (using Google) and sent a note to Mr Careless headed "Meeting with London Oil and Gas". There was some limited information about Mr Hume-Kendall. Mr Thomson was described as having been a relationship manager at RBS who was now CEO of International Resorts Group plc (which had started in December 2013). Mr Russell-Murphy was described as an alternative investment adviser. She had been unable to find anything about Mr Golding, nor had she been able to find anything about the SAFE investment bond on Google. Lakeview was described as quite a big holiday resort in Cornwall.

247. At the meeting, Mr Hume-Kendall and Mr Golding outlined three investment proposals: a proposed £50 million fund for oil and gas exploration, which Mr Careless and Ms Venn considered to be high risk and unlikely to result in many members of the public deciding to invest; a bond issue based on the leisure and tourism industry, involving IRG, L&TD, the Lakeview resort in Cornwall, and a resort in Cape Verde, which Mr Careless and Ms Venn also thought would be unattractive to investors; and SAFE.

248. Based on an interview Ms Venn gave to the administrators of LCF after its collapse, I find that at the meeting both Mr Golding and Mr Hume-Kendall spoke about these proposed investments and that Mr Careless and Ms Venn understood them to be in business together.

249. Ms Venn said in her witness statement (and I find) that there were uncomfortable moments in the meeting. Mr Hume-Kendall and Mr Golding had a few different business interests that they wanted help to promote. Mr Hume-Kendall's real interest was an oil bond, but Mr Careless and Ms Venn thought that this was less attractive than working for SAFE because they could not see that the public would be interested in an oil bond; it seemed too speculative and risky. Ms Venn took a copy of a prospectus for the oil bond, to placate Mr Hume-Kendall.

250. She also stated in her interview with the administrators (and I find) that a tourism and leisure business was discussed, and that Cape Verde was mentioned. Again, Mr Careless and Ms Venn thought that this was not something that would interest retail investors.

251. They were really interested in the SAFE bond. They knew that Mr Russell-Murphy was already selling it. They thought that the public would be interested in a business lending to SME companies. At the meeting, the three proposals (oil and gas, leisure and tourism, and SME lending) were presented as three separate and distinct investments.

252. At that stage, the role envisaged for Mr Careless and Ms Venn was providing leads, a website and online reputation management, in exchange for a fee.

253. After the meeting, Ms Venn made notes which she sent to Mr Careless. She said (among other things):

> "[Information about Mr Hume-Kendall, Mr Golding and Mr Russell-Murphy as in her earlier email].
>
> Spencer Golding: No public information, couldn't look up his history but clearly a key player in the team.
>
> SAFE (Sales Aid Finance England).
>
> Charge SMEs 12-15% and give a return of 8.5% to investors, this is paid quarterly. Money tied in for 2 years. Loans no longer than 1 year and 150% asset backed security. The company also put up £4.5m security from their own Real Estate portfolio. This is a section 21 exemption bond but are moving towards full FCA accreditation. They have £1mil in this fund.
>
> Leisure and Tourism
>
> 2 Divisions
>
> **IRG International Resorts Group** www.irgplc.com this is basically a land bank
>
> **LTD** - built out holiday resort in Cornwall and Cape Verde. Lake view in Cornwall … has 70 units and 105 bed hotel. Looking to raise up to £100mil, will be the smallest high yield fully FCA regulated bond. The bond money stays in escrow until defined draw down targets are reached. £2mil, £10mil, the. £10mil tranches. End of year plan is to take this to AIM.
>
> London Oil and Gas
>
> [Details of management team]

> They are exploration they are not production …
>
> Fund cap £100mil. Regulated 5 years bond prospectors [sic] ready in second quarter 2015.
>
> **Suggestion**: link all three products with a bond wrapper. Offers choice and risk spread for investors.
>
> Initial opportunity: overview website and potentially websites for all three funds.
>
> Brochures
>
> Online reputation management"

254. Ms Venn said in an email of 25 February 2015 that there was excellent news from Mr Beal: "They are totally on the line and want to be reeled in. They would like to start with £1m leads ASAP".

255. Mr Careless and Ms Venn began a trial of selling leads for £150 per lead. They used a new company, Surge, to invoice for these services. Surge's first invoice was dated 13 March 2015 but was numbered no. 011. The second invoice was numbered no. 22. Mr Careless and Ms Venn chased Mr Russell-Murphy for payment of invoices, and Mr Russell-Murphy told them that he would contact Mr Golding following which the invoice was paid. The trial ended by 19 March 2015 and Mr Russell-Murphy provided feedback.

256. Mr Careless had greater ambitions for the relationship with SAFE. He proposed a joint venture with SAFE to Mr Russell-Murphy in an email of 23 April 2015.

257. The proposal was that Mr Careless and Ms Venn would provide leads, as well as sales and marketing materials, and that in return they would be paid £500,000 upfront, a further £500,000 on reaching a certain investment threshold, and 5% of all funds delivered.

258. Mr Hume-Kendall was not attracted: he explained to Mr Golding and Mr Russell-Murphy in an email of 24 April 2015 his view that the arrangement should be success-driven, and he was concerned by the lack of "conversions" of leads. Ultimately, the proposal was not pursued.

259. I find Mr Careless was told that Mr Golding was not keen on an upfront payment. Mr Russell-Murphy, Mr Hume-Kendall and Mr Golding were all involved in the discussions about the possible joint venture.

260. I also find that Mr Careless and Ms Venn remained keen about the possibility of collaborating with Mr Russell-Murphy in connection with SAFE.

Re-naming of LCF

261. SAFE was renamed as LCF in the summer of 2015.

262. This was about the same time as the acquisition, led by Mr Hume-Kendall, of a company called "London Oil & Gas Limited" (company number 02504629) from Mr Eric Bosshard and his family.

263. Mr Hume-Kendall was heavily involved in this process. I find that he envisaged that London Oil & Gas would form part of a "London Group" of companies, with London Trading & Development Group Limited ("London Trading") as the parent company. There are emails (in which Mr Sedgwick was involved) showing that there was a proposed restructuring. By 4 June 2015, Mr Hume-Kendall envisaged that one of the subsidiaries of London Trading would be "London Capital & Finance" and that SAFE should be renamed "London Capital & Finance". In the event, SAFE was renamed "London Capital & Finance Limited" on 1 July 2015.

264. Mr Thomson said in his evidence that the name change was his own idea and not that of Mr Hume-Kendall. I reject that evidence. I find that the name change occurred at about the time of the proposed restructuring just described and that the idea at the time was that it would be part of the "London Group" of companies. That was the reason for the use of the word London in the name. I find that Mr Thomson gave this evidence because he wanted to suggest that by the time of the name change he was running LCF alone.

265. Mr Careless and Ms Venn agreed to prepare a website and branding materials for the rebranding of SAFE as LCF, for a fee of £10,000 plus VAT. Mr Careless and Ms Venn completed this work quickly so that they could begin selling the LCF bond to retail investors as soon as possible. Mr Russell-Murphy and Mr Careless agreed to join forces for this purpose. The initial idea was that Mr Careless would help to generate the leads, and Mr Russell-Murphy would convert them into bond sales. Their plan then changed to one where Surge would market the bonds and Mr Russell-Murphy's sales operation would be brought into Mr Careless's marketing operation.

266. Following this agreement, Mr Russell-Murphy put Mr Careless in touch with Mr Thomson, who contacted Mr Careless for the first time.

267. At about the same time, Surge reformatted the LCF brochure so that it looked more professional. It continued to contain the same basic contents as the SAFE brochure, including the text about the shortage of funding for SMEs and the business model of lending to SMEs.

268. On 27 July 2015 Mr Hume-Kendall and Mr Barker approved payment of the second invoice (£5,000 plus VAT) for the work of Mr Careless and Ms Venn in rebranding SAFE as LCF. Mr Sedgwick made the payment.

269. In early July 2015, an agreement was reached between LCF and Surge, effectively as a continuation of the earlier arrangement with Mr Russell-Murphy, that LCF would pay a commission of 25% to Surge of all sums raised from bondholders. Mr Russell-Murphy agreed to work with Surge on terms that he would receive the same amounts as Mr Careless received from Surge.

Grossing up under the loan agreements

270. In the loan agreements entered between LCF and its borrowers, the "Cost of Borrowing" was defined to mean the sum which would be added to any sum drawn down which had been incurred by LCF in raising the funds comprising the facility. The definition was vague and unspecific. But, from the outset, LCF treated the commissions paid to Surge as a Cost of Borrowing.

271. A borrower would therefore have to pay the 25% fee paid to Surge. Hence if Surge raised £1 million from bondholders, Surge would immediately be paid £250,000. The balance of £750,000 would be made available to a borrower, but the borrower would (on making the draw down) become liable to repay £1 million and interest on that sum. The borrower would also be required to pay an arrangement fee of 2%. For the borrower (ignoring the 2% fee) its obligations to pay principal and interest were therefore grossed up by 33.33%.

The Golding-SHK Agreement

272. On 16 July 2015 Mr Sedgwick sent a draft of an agreement called the "Golding-SHK Agreement" to Mr Hume-Kendall and Mr Golding, copying Mr Thomson. He said he understood that it reflected what had been agreed.

273. The finalised agreement, signed in July 2015, was between Mr Hume-Kendall, Mr Barker, Mr Golding, LCCL, and London Trading. Mr Hume-Kendall, Mr Barker and Mr Golding signed it.

    i. It stated that Mr Golding was one of the owners of LCCL with a share of 71.25%.

    ii. It referred to Mr Hume-Kendall, Mr Golding, Mr Thomson and Mr Barker as having interests of 45%, 45%, 5% and 5% in London Trading.

    iii. It dealt with the sale of LCCL to London Trading (see below) and provided that Mr Thomson and Mr Barker would each have a 5% interest in London Trading.

    iv. It also provided that Mr Thomson would own the shares in LCF, and that LCF would enter into an agreement with London Trading to be "responsible for all fundraising for LTDG and its group of companies".

274. Mr Thomson was not a signatory to this agreement, but he had a copy of an unsigned version of it. He sent a copy of it to Mr Barker on 18 April 2016 to evidence that he was the owner of all the shares in LCF; he referred specifically to the passage which provided for this, which shows that he read it at the time.

The alleged buy-out agreement

275. Mr Thomson alleged in his Defence, and stated in his witness statement and oral evidence, that the day before the draft Golding-SHK agreement was circulated to him, two other agreements were signed. These were a memorandum of understanding ("the MOU") and a sale and purchase agreement ("the SPA"). These are each documents dated 15 July 2015 on their face. Mr Thomson called the two together as "the buy-out agreement". He maintained throughout his evidence that they were genuine and were executed on 15 July 2015.

276. In closing, his counsel submitted that I should so find. She argued that they were of central importance to the case as they explained payments made to Mr Thomson deriving from LCF's funds after July 2015 (see below). Mr Thomson's case is that those payments represented the sale of his interests in various companies associated with Mr Hume-Kendall, Mr Barker and Mr Golding and that he had done nothing wrong in receiving them.

277. The Claimants argued that the two documents were forged. They contended that they were concocted with the assistance of Mr Sedgwick after the FCA raid on LCF on 10 December 2018, when Mr Thomson and the other defendants realised that they needed to explain why Mr Thomson had received around £5 million ultimately deriving from LCF.

278. Early in the trial, Mr Thomson took the point that the Claimants were deemed to have admitted the authenticity of the documents (by not objecting to them after they featured in his disclosure) and could not challenge their dating. After hearing argument, I decided that the Claimants should be allowed to withdraw from any deemed admission and were entitled to challenge the authenticity of the documents. That decision was not appealed.

279. In closing arguments, counsel for Mr Thomson submitted that, since the Claimants had not pleaded that the documents were later fabrications, they could not allege this as part of their case that there had been fraudulent trading or a breach of duty by Mr Thomson. I am unable to accept that submission. Mr Thomson has positively asserted the authenticity of the two documents and has sought to justify his receipt of £5 million by reference to them. As his counsel said, they are of central importance to his Defence. The Claimants' case is that the documents were later fabrications, so that they cannot be relied on to justify the payments. Their positive case is that the payments to Mr Thomson were misappropriations from LCF. Once I had ruled that the Claimants were allowed to challenge the authenticity of the documents, it was open to them to seek a finding that they were forged and rebut this element of the Defence.

280. Moreover, the point goes to Mr Thomson's credibility.

281. The first of the two documents is the MOU.

    i. The version relied on by Mr Thomson is dated 15 July 2015. Mr Thomson, Mr Hume-Kendall and Mr Barker signed it.

    ii. Clause 1 stated that it was intended to set out the basis on which Mr Thomson, Mr Hume-Kendall, and Mr Barker "shall operate their business activities in the future".

    iii. Clause 2 stated that the parties had hitherto invested together in other matters and that Mr Thomson had agreed to withdraw from those business activities in consideration of the following.

    iv. Clause 3 stated that it was agreed that Mr Thomson should continue to own and develop his separate business, LCF, without any involvement or interest on the part of Mr Hume-Kendall or Mr Barker and that "[h]e will manage and run the business in accordance with all laws and applicable regulations".

    v. Clause 4 stated that "In all other matters [Mr Thomson] shall continue to have an interest of 5% in all businesses in which [Mr Barker] and [Mr Hume-Kendall] shall jointly invest. However [Mr Thomson] shall not take any active or passive role in the businesses that [Mr Barker] and [Mr Hume-Kendall] shall invest in other than as a minority shareholder and shall at all times vote his shareholding in accordance with the directions of [Mr Barker] and [Mr Hume-Kendall] and if their instructions differ then he shall abstain from voting. [Mr Thomson] will accept all decisions by [Mr Barker] and [Mr Hume-Kendall] as to the purchase and sale of businesses,

investment and management decisions. [Mr Barker] and [Mr Hume-Kendall] shall conduct their ongoing businesses in accordance with all laws and applicable regulations".

vi. Clause 5 said that the parties "shall each operate their separate businesses at arms' length".

282. The second document is the SPA also dated 15 July 2015 on its face.

i. It is between Mr Thomson (as "Seller"), and Mr Hume-Kendall and Mr Barker (as "Buyer"). The recitals stated, (A) that Mr Thomson had worked with Mr Hume-Kendall and Mr Barker to develop "the Companies" but the parties had agreed to separate the Companies from the new business of Mr Thomson "in acquiring and developing …LCF"; and (B) to enable the separation of the Companies from LCF Mr Thomson had agreed to sell and Mr Hume-Kendall and Mr Barker had agreed to buy "the Sale Shares" under the agreement.

ii. The Companies were those listed in the schedule to the SPA "together with such companies and businesses established by the Buyers jointly as part of their "Joint Endeavour".

iii. The Joint Endeavour was defined as the intention of the Buyers to create a group of companies to develop the existing business and to add to the group such further companies in the fields of oil and gas exploration and sales, artificial intelligence, and other IT fields as they deem appropriate.

iv. The Sale Shares were shares representing five per cent in value of the shares in the Companies which were held by the Buyers on trust for the Seller.

v. The Purchase Price was to be 5% of the value of each of the Companies that was realised during the period of five years from the date of the agreement up a maximum of £5 million which would be paid by the Buyers to the Seller.

vi. Mr Thomson agreed that his signature would constitute his resignation as director or secretary from the Companies on the date thereof. Completion of each sale was to take place on the dates when the Buyers raised value on the disposal of the Sale Shares.

vii. Mr Thomson covenanted that he would run his business, LCF, independently of the business of the Companies and would not interfere with the Buyers' management of the Companies and would accept all of their decisions about the sale of the Sale Shares.

viii. The Buyers covenanted that they would operate the Companies independently of the business of LCF and would not interfere with Mr Thomson's ownership and management thereof. There was an entire agreement clause saying that it constituted the entire agreement between the parties and superseded all other agreements. It was also agreed that any variation would have to be in writing and signed by the parties.

283. The Claimants attacked the authenticity of these documents on numerous grounds. Mr Thomson maintained in his written and oral evidence that they were entered into on 15 July 2015.

284. I find that the documents were fabricated after the FCA raid on LCF in December 2018. My reasons follow.

285. First, there is relevant evidence about the drafting history of the MOU.

   i. The FCA raid was on 10 December 2018. The FCA directly asked Mr Thomson whether he had received any financial benefit from the borrowers. He said that he had not.

   ii. The first disclosed version of what became the MOU is from Mr Sedgwick's computer. It was a Word document with metadata showing 11 December 2018 (the day after the raid) as the date of creation. It had four clauses rather than the five in the final version. Unlike the final version it set out the parties' shares as Mr Barker: 50%, Mr Hume-Kendall: 45% and Mr Thomson: 5%. It said that Mr Thomson would not take any active role in the businesses of the other parties.

   iii. Mr Thomson was unable to account for the metadata showing the first draft of the document being created on 11 December 2018. His counsel submitted that it was possible that the agreement was not available to Mr Sedgwick at that date and that he was seeking to recreate an earlier version. That submission is fanciful. It is inconceivable that Mr Sedgwick could have tried to recreate the document (from 3 years earlier) without having it before him. But if he had the signed version, he would have copied that, rather than creating a less complete one.

   iv. In any case, there was no explanation for why Mr Sedgwick should have needed to create another Word version (indeed a different Word version) in December 2018.

286. Moreover, there was a clear incentive for creating the MOU – it arose from the need to justify the payments that Mr Thomson had received from LCF.

287. The earliest version of the signed MOU (i.e. the one dated 15 July 2015) in any of the disclosure has metadata of 19 February 2019. This is a PDF rather than a Word version, so the earliest date of its creation is not known. But nowhere in the disclosure of any of the Defendants is there a version of the 11 July 2015 document with any metadata before 19 February 2019. I conclude that this version was created on or about this date.

288. This version was sent to the administrators on 19 February 2019.

289. I am satisfied that the Word version with metadata dated 11 December 2018 was a first draft of what was then changed, signed, backdated to 15 July 2015, and sent to the administrators.

290. Second, the earliest version of the SPA in the parties' disclosure is a scanned PDF created on 5 February 2019. It was signed by Mr Thomson, Mr Hume-Kendall and Mr Barker but dated, in manuscript, 10 August 2015 (rather than 15 July 2015).

291. Mr Thomson was unable to explain in evidence why, if there was a genuine agreement signed on 15 July 2015, the parties should have signed a further version of the same agreement 10 August 2015. It is hard to think of a realistic explanation.

292. There are in fact emails dating from 2019 which explain the two versions. These show that the version with the 10 August 2015 date was in fact signed on about 5 February 2019, but that it was then decided that it would be better to replace it with another one, dated 15 July 2015. On 12 February 2019 Mr Sayers sent an email to Mr Sedgwick, Mr Hume-Kendall and Mr Barker saying that to progress his work he needed the following "agreement with [Mr Thomson] on his equity c. July 15 (Robert [sc. Mr Sedgwick])". This shows that it was decided that the existing signed version dated 10 August 2015 was considered to be dated too late and that they needed an earlier dated one. Mr Sedgwick was given the task of producing it. There is then a PDF showing the 15 July 2015 version being scanned on 12 February 2019.

293. <u>Third</u>, it is very unlikely that the two agreements would have been signed on the same date. The MOU provides for Mr Thomson to be a continuing minority shareholder as to 5%. The SPA by contrast provides for the sale of his interest to Mr Hume-Kendall and Mr Barker for a price of up to £5 million. The principles underlying the documents differ and they do not fit together.

294. Moreover, the alleged SPA contained an entire agreement clause which said it superseded all other agreements.

295. Mr Thomson could not explain why there were two agreements between the same parties on the same date rather than one.

296. <u>Fourth</u>, if the agreements had been entered into in July 2015, it is probable that there would have been drafts circulated to the parties, and some evidence of negotiations of the price to be paid to Mr Thomson. Where other agreements were entered into, they were generally drafted by Mr Sedgwick, who sent them out in draft by email to the parties and sought comments. Mr Thomson, Mr Hume-Kendall and Mr Barker purportedly entered the MOU and SPA. All of them, and Mr Sedgwick, have given disclosure. There is no trace of any drafts or of any negotiations in the period before 15 July 2015.

297. <u>Fifth</u>, the list of Companies in the schedule to the SPA does not fit in all respects with the 15 July 2015 dating:

    i. On 15 July 2015 Mr Hume-Kendall and Mr Barker did not hold any shares in LCCL on trust for Mr Thomson. In fact, Mr Thomson and Mrs Hume-Kendall held them on trust for Mr Golding, Mr and/or Mrs Hume-Kendall, and Mr Thomson.

    ii. The list includes London Oil & Gas Ltd, which was still owned by the Bosshard family.

    iii. The registered office of that company was given as Wellington Gate, but that change did not happen until 4 August 2015.

    iv. These would not have been errors by 10 August 2015 (the date of the first signed version of the SPA). I find that Mr Sedgwick overlooked them when producing the

re-dated 15 July 2015 one. He was responsible for the backdating but slipped up when producing the version dated 15 July 2015.

298. Sixth, there was a trust deed dated 28 August 2015 which provided that Mr Thomson was to have a beneficial interest in London Oil and Gas Ltd (i.e. the company bought from the Bosshards). This is not consistent with the idea that he had sold his interests by then. Mr Thomson was unable to offer any explanation of this.

299. Seventh, at the end of September 2015 the shares in the company then called London Group Limited, previously held by International Resorts Partnership LLP, were registered in the names of Mr Barker (as to 45% for Mr Golding and 5% personally), Mr Hume-Kendall (45%) and Mr Thomson (5%). This holding continued until March 2017, when all the shares in that company were transferred to London Group LLP.

300. Mr Thomson was unable to explain why the shares were put into his name legally in this way if they had already been sold to Mr Hume-Kendall and Mr Barker and he retained only an interest in the proceeds under the alleged buy-out agreement.

301. Mr Thomson ultimately said that he did not know that the shares had been put into his name. I reject this evidence. Mr Sedgwick sent him an email on 2 September 2015 which explained what was happening i.e. that the shares were going to be transferred by IRP to the four individuals in accordance with the agreed division. He also attached a diagram showing the group structure. I find that he knew that the shares were transferred to him legally and that this accorded with his then understanding that he was a 5% shareholder in the London Group of companies.

302. Had the buy-out agreement existed, the shares would not have been put into his name legally; they would presumably have been held under some kind of trust arrangement pending a disposal.

303. Moreover, on Mr Thomson's case, Mr Sedgwick was responsible for preparing the alleged SPA of 15 July 2015. If the buy-out agreement had existed, Mr Sedgwick, who was in charge of the designing the restructuring in September 2015, would have understood that the legal title to the London Group Limited shares should be put into the names of Mr Hume-Kendall and Mr Barker. He was familiar with the use of such trust arrangements. Indeed, Mr Golding's shares were put into the name of Mr Barker.

304. Eighth, the Golding-SHK Agreement (of July 2015) provided that Mr Thomson was entitled to five per cent of the shares in London Trading, despite that company being listed in the schedule to the alleged SPA as a share which he had sold. The Golding-SHK Agreement said that Mr Thomson would be entitled to a 5% non-voting shareholding in London Trading. It did not say that these would be held for him on trust. This is therefore inconsistent with the SPA.

305. Ninth, the Lakeview SPA (see further below), which was being drafted during July 2015 and executed on 27 July 2015, provided for Mr Thomson to sell his 5% beneficial interest in LCCL to London Trading. This is inconsistent with the alleged SPA, by which (on his case) he had already sold the shares to Mr Hume-Kendall and Mr Barker. Nobody raised this as an anomaly at the time. Mr Sedgwick would have done had the SPA existed.

306. Tenth, the SPA provided for the resignation of Mr Thomson as a director of the London Group companies. The contemporaneous documents show that he resigned as a director of a number of the companies at the end of June 2015.

307. Eleventh, as already explained, on 18 April 2016 Mr Thomson sent a copy of the Golding-SHK Agreement to Mr Barker as evidence that he was the owner of all the shares in LCF; and referred to the specific part of the agreement which effected this (showing that he had read it). Had the MOU or SPA existed, he would have sent them to Mr Barker, rather than a draft agreement - to which he was not a party. Mr Thomson could not explain this in oral evidence.

308. Twelfth, as explained below, later in the history, Mr Thomson started to receive 7.5% of the proceeds of sales or realisation of London Group companies. This was 50% more than the 5% payable under the alleged July 2015 SPA. Mr Thomson gave evidence that while he was aware of this increased share, he paid it little attention because the total he could receive was capped at £5 million and it was a matter for Mr Hume-Kendall and Mr Barker if they chose to pay him more than 5% - it would merely operate to accelerate some of the receipts. I am unable to accept that evidence, which makes no commercial sense. The SPA contained not just the £5 million cap but also a five-year time limit. It would have been uncommercial for Mr Hume-Kendall and Mr Barker to accelerate payments by paying 50% more than had been agreed: it was always possible that the time limit would expire before the £5 million was reached.

309. Thirteenth, in a mortgage application in May 2017, Mr Thomson stated that he stood to make tens of millions of pounds from his interest in the companies. He would not have been able to say that (at least without lying) had he already sold his shares for a maximum of £5 million. It is more likely that the reason he did not refer to the SPA is that it did not exist.

310. Fourteenth, Mr Thomson did not disclose the existence of the SPA in his tax returns. He did, however, refer to the Lakeview SPA. Mr Thomson gave oral evidence that he had given all the relevant materials to his accountants and that he trusted them to produce his tax returns. He suggested that he did not read them before signing them - and that they were simply presented to him for signature at a meeting. I do not accept that evidence. The emails show that his accountants sent him the completed tax returns for signing before the meeting. It is more likely that he did not refer to the SPA because it did not exist.

311. Fifteenth, there is the complete absence of any reference to the SPA or the MOU in any documents before late 2018 and early 2019. Mr Thomson relied at the trial on an email of 25 January 2016 recording what he told Ms Venn at a meeting that day. The relevant passages are quoted in para [333] below. The email recorded him as saying that that as of a few months ago he became the sole owner of LCF. He said that this was a reference to the July 2015 SPA. But what he told Ms Venn is entirely consistent with the Golding-SHK Agreement, which stated that he was the owner of LCF. This is also consistent with the fact that on 18 April 2016, he sent a copy of the Golding-SHK Agreement to Mr Barker to evidence that he was the owner of all the shares in LCF (see para [307] above). I find that in his discussions with Ms Venn he was referring to that agreement and not the alleged SPA.

312. Sixteenth, one of the terms of the MOU and SPA was that Mr Thomson would manage LCF without the involvement of Mr Hume-Kendall or Mr Barker. Although Mr Golding was not mentioned, generally a reference to Mr Barker in any of the agreements between the parties was (partly) as a proxy for Mr Golding. As explained below, Mr Hume-Kendall, Mr Barker and Mr Golding continued to be involved in the management of LCF after 15 July 2015. For the reasons set out below I reject Mr Thomson's evidence that Mr Golding was involved only as an adviser or mentor.

313. Seventeenth, there is an entry in a conflict-of-interest register maintained by LCF. There are two relevant entries:

    i. An entry dated 26 September 2016 referred to Mr Thomson as a shareholder in the London Group plc, described as "connected to" many of the borrowers of LCF. This entry is more consistent with the Golding-SHK Agreement than with the alleged buy-out agreement.

    ii. An entry dated 1 June 2018 said that "[c]lient companies that he was connected to previously as shareholder and/or director and transferred/sold his interest in has started to pay for his interests transferred/sold". Mr Thomson's counsel submitted that this was a reference to the 2015 buy-out agreement. It is, however, also consistent with the arrangements under the Golding-SHK Agreement, i.e. that Mr Thomson had remained a beneficial shareholder in the London Group companies until he agreed for such interests were sold or transferred under the various SPA transactions referred to in detail below. This entry does not therefore point either way.

314. As explained above, Mr Thomson placed the alleged "buy out agreement" at the centre of his defence. He repeatedly relied on it during his oral evidence. He said that he thought that the amounts he was receiving under the various impugned SPA agreements were the price under the buyout agreement and that he was unaware that payments were being made to Mr Hume-Kendall, Mr Barker and Mr Golding at the same time and therefore did not realise that they were also "cashing out" (i.e. that money was going into their hands rather than remaining in the borrowing companies).

315. He maintained this position throughout his evidence. When asked about the second version of the SPA, he claimed that on 12 February 2019 he was standing on the edge of a cliff at Beachy Head. The implication was that he was contemplating suicide. But the metadata of the version of the SPA from his own disclosure was scanned on 12 February 2019, which shows that he scanned it on that date and that his evidence that he was on a cliff-edge was false.

316. For the reasons given above, I have concluded that Mr Thomson was deliberately lying in his evidence about the alleged buy-out agreement. He knew that the MOU and SPA were created after the FCA raid.

317. This conclusion is significant in a number of ways:

    i. It shows that Mr Thomson was a dishonest witness, prepared to lie even in the face of overwhelming evidence.

ii. Mr Thomson was prepared to be involved dishonestly in the production of backdated documents to mislead the authorities or administrators.

iii. The only justification advanced by Mr Thomson for the receipt of around £5 million from LCF is based on a fabricated defence.

iv. The other Defendants who were involved (including Mr Sedgwick, Mr Hume-Kendall and Mr Barker) knew that they had to produce a justification for the payments received by Mr Thomson because, in the absence of this explanation, it would appear that Mr Thomson had received benefits via the borrowing companies by reason of a continuing interest in them.

v. It also shows that Mr Sedgwick was prepared to create backdated documents for the purpose of misleading the authorities or the administrators. This was dishonest. It also shows that he realised that it was necessary to concoct a story to explain the payments to Mr Thomson.

Continuing involvement of Mr Hume-Kendall and Mr Golding in LCF after the Golding-SHK Agreement

318. After the Golding-SHK Agreement, Mr Thomson oversaw the day-to-day management of LCF and Mr Hume-Kendall had less involvement. Mr Hume-Kendall was nonetheless involved to an extent with LCF after the agreement. For example, in November 2015, Mr Hume-Kendall (along with Mr Golding) approved a letter designed to encourage SAFE investors to roll over their investment to LCF, rather than demand the return of funds.

319. I am satisfied that Mr Golding had a significant continuing involvement in relation to LCF after July 2015. I reject the evidence of Mr Thomson that Mr Golding's only role was that of an occasional adviser or mentor. Mr Golding has not given disclosure and has been debarred from defending, so his documents are not before the court. I have also noted already that he sought to conceal his involvement in the business and management of companies owing to the undertakings he had given to the Secretary of State. Nonetheless, as explained below, the available documents show his continuing involvement.

320. On 9 September 2015 Alex Lee (a partner at Buss Murton) provided a spreadsheet relating to the LCF client account to Mr Thomson, who forwarded it to Mr Russell-Murphy cc. Mr Golding, explaining that there were no new funds being credited that day. He was updating Mr Golding about receipts.

321. On 22 September 2015 Mr Russell-Murphy sent Mr Golding an update of LCF's "pipeline" of prospective investors. This information was provided to Mr Golding before it reached Mr Thomson: Mr Russell-Murphy forwarded the email to Mr Golding, and later that evening, Mr Golding forwarded the information to Mr Thomson, who forwarded it to Ms Maddock at LCF.

322. On 15 September 2015 Ms Venn sent an email to Mr Thomson saying that she was "ready to do a minimum order print to provide prospective investors with hard copy brochures". Mr Thomson forwarded it to Mr Golding: "Hi Spencer, see below, did they mention this to you today?" I infer that Mr Golding had met Surge that day to discuss LCF.

323. On 17 September 2015, when Mr Thomson had drafted an LCF bond prospectus, he sent it to Mr Russell-Murphy and Mr Golding asking them to review it and to provide their comments. Mr Thomson said in evidence that he looked to Mr Golding for advice because of his broad experience. I reject this. He sent it to Mr Golding because of the latter's interest and involvement in LCF's business.

324. On 13 October 2015 Ms Venn sent an email to Mr Careless, cc. Mr Russell-Murphy, which said:

> "As requested, I phoned Spencer. He had a moan about two things:
> 1. He downloaded the brochure on the website and it still has the old management team
> 2. The website looks 'sparse'
> I told him that Andy provided new biogs that were not detailed enough to use, I had explained this to Andy who asked me to give him examples of what I wanted, I emailed 4 examples and have chased multiple times but I am still waiting.
> Andy said he is too busy to get me the pictures to go with the biogs. He asked me to stop chasing him and he will do it ASAP.
> I queried what he meant by 'sparse' because I think it looks sleek, professional and is concise in an effective way. He said his team would look over it again and give specific feedback on Thursday. I then said there was something I wanted to add but had been awaiting content from Andy since July: real case studies / customer testimonials. Spencer seemed to think this would make a big improvement and said he would chase Andy to get it to us.
> Ultimately, I don't think he is pissed off with us, I think he is pissed off with Andy and he asked me to keep the pressure on Andy and 'chase him harder'."

325. The continued role of Mr Golding (as well as Mr Hume-Kendall) is also apparent from emails regarding a draft reinvestment letter. Some of the loans from early investors to SAFE were falling due for repayment.

    i. Mr Thomson wanted Mr Russell-Murphy and Ms Baldock to try to persuade those investors to reinvest. He emailed Ms Baldock on 2 November 2015, cc. Mr Barker and Mr Russell-Murphy, saying, "It looks like most of the SAFE clients are wanting to be repaid … is it something that can be addressed to try and stop so many wanting to exit?"

    ii. On 2 November 2015 Ms. Maddock circulated a draft letter for clients nearing the end of their terms to try to persuade them to reinvest instead of requesting repayment.

    iii. On 10 November 2015 Ms Maddock emailed Mr Golding and Mr Barker, cc. Mr Thomson, saying that she had "shown the letter to Simon, Elten and John all of whom are happy with it".

326. Mr Careless and Ms Venn continued to raise important issues about LCF's business with Mr Golding without reference to Mr Thomson.

    i. On 11 November 2015 Ms Venn emailed Mr Careless to say that LCF had begun to require investors to complete an "onerous" self-assessment test. Mr Careless forwarded her email to Mr Golding, explaining that "we are required by your lawyers to have a much harder sign-up process than our (much larger) competitors … Can we not at the very least match their sign-up process for compliance? We will be committing commercial suicide to have a harder sign up than the big brands".

    ii. The next day Ms Venn emailed Mr Barker to thank him for his assistance, saying, "I understand we can go ahead with our proposed simpler appropriateness test".

    iii. Mr Thomson was not involved in the conversation and knew nothing about it until after the decision had been made.

    iv. On another occasion, Mr Careless was concerned about LCF's delay in paying commissions to Surge. Mr Careless and Mr Russell-Murphy understood that Mr Golding was the person who could resolve it. On 16 November 2015, Mr Careless asked Mr Russell-Murphy, "any news from Spencer in releasing all the comms that are tied up?"

327. Others in Surge understood the central role occupied by Mr Golding within LCF. On 16 November 2015, Ashleigh Newman-Jones of Surge (the son of Mr Jones) told Mr Careless, cc. Ms Venn and Mr Jones, that the revised LCF website was "ready for approval from Andy/Spenser [sic]". A proposed change in LCF's bond rates was described as "subject to Spencer and Andy's approval".

328. The contemporaneous documents also show that Surge believed that Mr Golding had the ability to override Mr Thomson in relation to the affairs of LCF. On 17 November 2015 Mr Thomson emailed Ms Venn to say that the LCF investment memorandum was not sufficiently accessible on the LCF website. Ms Venn forwarded his email to Mr Careless, saying, "We need to override him and speak to Spencer". I find that Surge's understanding of the relationship between Mr Golding and Mr Thomson was an accurate reflection of the reality. Surge's understanding was based on what they saw happening in practice. If they had a problem with Mr Thomson, they contacted Mr Golding or Mr Barker and it was generally resolved to their satisfaction.

329. There was a significant episode concerning compound interest.

    i. On 18 November 2015 Ms Maddock told Mr Thomson that a new investor, Mr Norris, had "decided to compound the interest on the 2-year term".

    ii. Mr Thomson told Ms Maddock that LCF had never offered compound interest.

    iii. Ms Maddock emailed Ms Baldock, Mr Jones, and Ms Venn (cc. Mr Thomson and Mr Russell-Murphy) attaching a mark-up of the application form, highlighted in purple and annotated in manuscript with the words, "WHO AUTHORISED THIS? What is this? We DO NOT do compound interest".

iv. Ms Venn replied, "Re the compounded interest: John Russell Murphy agreed this with Spencer two weeks ago".

v. Ms Venn also emailed Scott Allen of Surge, cc. Mr Russell-Murphy, explaining, "Don't worry about Katie's comments re compound interest, I know this was agreed between JRM [sc. Mr Russell-Murphy] and Spencer and have pushed back on this point".

vi. Subsequently, Mr Thomson implemented Mr Golding's decision: Mr Thomson emailed Mr Huisamen on 16 January 2016 to explain that "we were initially offering simple interest but are now going to be offering compound interest".

330. Mr Thomson said in evidence about this episode that Mr Golding had made a promise about compound interest without LCF's authority. He said that Mr Golding sometimes got involved in LCF's business and that he should not have done so. I do not accept that description of Mr Golding's role. The Surge documents show that they looked to Mr Golding to overrule Mr Thomson on significant issues and that Mr Golding did so. The documents also show that Surge's representatives met Mr Golding several times in late 2015 to discuss the affairs of LCF in the absence of Mr Thomson.

331. There was another episode in November 2015 concerning Surge's sale team. On 30 November 2015 Ms Venn emailed Mr Careless and Mr Russell-Murphy ("Shocking potential issue!") to raise a "potential looming problem". Mr Thomson had told Ms Venn that Surge should be "moving away from having a sales team" in favour of online-only sales without the assistance of a salesperson. Ms Venn told Mr Careless and Mr Russell-Murphy that this "contradicts our last meeting with Spencer when he suggested we expand our sales team to have bigger capacity for face to face meetings": "I'm glad we are meeting Spencer tomorrow and can clarify/correct this madness!"; "Let's put it down to Andy being Andy and see if it actually gets raised with Spencer tomorrow".

332. Mr Golding's role was also shown in relation to a new logo in January 2016. Mr Careless emailed Mr Golding on 5 January 2016 to say, "Spencer, [t]he conversation is below, it was with Kerry. Not that it really matters, it is your company, and you can have any logo you want. My team all think the original logo is better. Two logos attached, 1 and 2. Please choose which you prefer. Simple. If you want the new logo then we will make the changes to the site …"

333. On 25 January 2016 Ms Venn met Mr Thomson and reported to Mr Careless and others in a long email. The report included the following:

> "Andy stated that he owns LC&F, he said: 'Spencer does not have ownership at all, I have a symbiotic relationship with Spencer we assist each other and we are vital to each other but he does not own LC&F. Please stop communicating key information without me. In a meeting last week Paul communicated information about GCEN and your objections to how it works Simon Hume Kendal [sic], he is my customer and it is inappropriate for you to have disclosed the working of my business to him and also inappropriate not to include me in the meeting. I was not made aware of these issues with GCEN.'"

> I said: 'There has been a misunderstanding, we have been lead to believe that whilst you are officially the business owner as registered at companies house, Spencer is a driving force behind LC&F and a key decision maker. You really need to take this up with Spencer because he has presented himself to us as the big chief at LC&F and he invited Simon to the meeting, we believed we were talking candidly to trusted partners who had specifically been invited by the LC&F establishment'
>
> He said: 'I will take it up for Spencer, just so you know, there is no side agreement / legal agreement behind the scenes, I own LC&F and Spencer does not. However, Spencer is very important to my operation and i will continue to have a good working relationship with him and him with me'
>
> So you understand the tone, Andy wasn't really complaining or annoyed, he was just trying to express to me a frustration that he mustn't be left out because actually it's his business and he wanted to make it clear that if we think Spencer is a controlling partner / owner he is not. This is contrary to what we have been led [to] believe all along. I was surprised so I double checked, I said: 'Did you come up with the concept of SAFE, was at all your idea and you launched it as a startup?' Him: 'Yes others were involved but yes it's my concept and as of a few months ago I am a sole owner of this business'
>
> I don't know what to believe?!? Is this a bit like if I said yes this is my business, nothing to do with Paul, check at companies house. Companies house would just show me but we all know Paul is the visionary and I just create systems to action the practicalities."

334. Mr Thomson relied on this email at the trial as evidence that by this stage he was the sole owner of LCF, and that Mr Golding was not. I reach the following findings about it:

   i. Before the conversation, the Surge Defendants had thought that Mr Golding was the driving force behind LCF even if Mr Thomson was the legal director and shareholder.

   ii. Although Mr Thomson was anxious to say at the meeting that LCF was his business, he also said that Mr Golding was important to the operation and that they would continue to have a good working relationship. He was unable in his evidence at trial to explain the nature of their relationship.

   iii. Mr Thomson complained in the meeting about LCF's affairs being discussed behind his back. He did not say that Mr Golding would not be involved in discussions, but that he, Mr Thomson, should also be included.

   iv. Mr Thomson no doubt wanted at the time to present himself as the sole owner of LCF as, at the same meeting, he explained that all of the lending was to businesses related to Mr Golding. He was astute enough to see that this would have been

raising a red flag. I find that in fact Mr Thomson continued to act in accordance with Mr Golding's ultimate directions.

v. Ms Venn left the meeting not knowing what to think. Mr Golding had presented himself as the driving force behind LCF. Ms Venn was clearly not convinced by what Mr Thomson had said about being the sole owner. That is why she compared the situation to Surge, where Mr Careless was the real owner, whatever was shown at Companies House.

vi. After this discussion, the Surge Defendants continued to deal with Mr Golding on the footing that he at least had a controlling role or influence over LCF (even if they also dealt with Mr Thomson). This is shown by the events recorded below.

335. Mr Ingham emailed Mr Thomson on 22 January 2016 about amendments to LCF's brochures, and copied the email to Mr Golding and Mr Hume-Kendall. On 9 February 2016, Mr Ingham emailed Mr O'Leary to explain that Mr Golding had called him about the new LCF brochures, demanding to know when they would be ready.

336. Also in early 2016, Mr Golding and Mr Hume-Kendall (but not Mr Thomson) were both involved in the discussions with Mr Careless and Mr Russell-Murphy about the possibility of Surge working exclusively for LCF. On 3 February 2016 Mr Sedgwick provided Mr Hume-Kendall and Mr Barker with a draft exclusivity agreement. On 5 February 2016 Mr Sedgwick provided Mr Hume-Kendall and Mr Golding with a third draft of the agreement. Mr Hume-Kendall sent it to Mr Russell-Murphy, saying that it should "get the ball rolling". Mr Hume-Kendall also explained that "Spence has very bad flu and he has had zero input into this after our initial instruction".

337. The attachment was a draft exclusivity agreement between London Group plc (defined as "London") and Mr Careless/Mr Russell-Murphy (defined as "Surge"). The draft agreement defined "Financial Products" to mean "an investment opportunity bond or other financial instrument issued by LCF and others to a Prospective Client who is introduced by Surge". It defined "Introduction" to mean "the provision to LCF of the contact details of a Prospective Client who purchases a Financial Product". The recitals stated:

> "(A) Surge has developed a method of access a large contact base are interested in investing in high quality opportunities
>
> (B) From proceeds of the Financial Products London is currently obliged to pay an introductory commission of 25%
>
> (C) London has agreed to pay to Surge the sums referred to in this agreement in consideration of Surge acting exclusively for London in introducing contacts as may be agreed between the parties …".

338. The clauses in the draft agreement included these:

i. Clause 2.1, "London appoints the [sic] Surge to identify Prospective Clients exclusively for LCF and others agreed with London and to make Introductions of such persons on the terms of this agreement".

ii. Clause 2.2, "Surge shall … act exclusively for London and use its best endeavours to make Introductions of Prospective Clients".

iii. Clause 5.1, "London shall pay to Surge the sum of £40,000 per month together with all approved costs and expenses which are agreed on a quarterly basis" (in addition to the commission of 25%).

iv. Clauses 5.2 and 5.3 provided that Surge could also obtain 10% of London Group plc.

339. On 17 February 2016 Mr Careless replied to Mr Hume-Kendall saying, "Thanks for the agreement and my apologies it has taken so long to reply. Would it be possible for John and I to meet with you and Spencer early next week to discuss it in person?" Mr Hume-Kendall replied (cc. Mr Golding and Mr Russell-Murphy) to say he would be happy to meet to discuss it.

340. Mr Careless sent a summary of the draft exclusivity terms to Mr Russell-Murphy:

> "1. SF will provide exclusive marketing to LG for a fixed fee of £40k per month.
>
> 2. LCF will pay 25% commissions for funds received by SF.
>
> 3. LCF will pay for 10% for commissions re-broked by SF.
>
> 4. If SF reach £30m funds or more within 12 months of signing of agreement they will receive 10% shareholding in LG.
>
> 5. If SF reach £50m funds or more within 12 months of signing of agreement they will receive 20% shareholding in LG.
>
> 6. SF will pay for all marketing costs of LCF.
>
> 7. PC has current contractual obligations to Blackmore Group and therefore any current or future arrangement with BG will remain outside of this agreement."

341. Mr Careless also sent this to Surge's accountant, Mr Partridge. The draft exclusivity terms were due to be discussed at a meeting between Mr Careless and Mr Hume-Kendall on 23 February 2016. Mr Careless's "to do" list on 11 April 2016 still included "LCF exclusivity".

342. This episode shows that Mr Golding and Mr Hume-Kendall (and Mr Sedgwick) saw LCF as a fund-raising vehicle for the London Group. They were seeking to negotiate arrangements with Surge concerning LCF. They could only have done this if they continued to be able to control its affairs. Surge certainly thought that they had this level of influence and control.

343. Mr Golding, Mr Barker and Mr Hume-Kendall continued to be routinely consulted by Surge personnel about administrative problems which arose from time to time in connection with LCF's dealings with investors.

i. On 7 September 2017 Ms Baldock provided Mr Careless with an agenda (which included various LCF delays and administrative problems) for discussion with Mr Golding.

ii. On 19 July 2018, following complaints from LCF investors about delays by LCF's staff in Eridge in dealing with ISA transfers, Ms Baldock told Ms Maddock of LCF that Surge would be "happy to take over the process from here as we have the resources". Ms Venn asked Mr Russell-Murphy, "Worth forwarding to Simon and Elten so they can see first-hand the issues around Eridge being slow? Or perhaps that's too much of a dig?" Mr Russell-Murphy replied, "Already have". Hence, Mr Russell-Murphy knew that he should turn to Mr Golding to get things done.

iii. On 19 July 2018 Mr Russell-Murphy emailed Mr Careless, Jo Baldock and Ms Venn to explain, "The transfers will be dealt with by us very soon. Spencer is instructing Andy to pass the work to our office next week".

344. The July 2018 exchange shows that Mr Hume-Kendall, Mr Barker and Mr Golding continued to be involved in the affairs of LCF throughout. The exchange also shows that Mr Careless, Ms Venn and Mr Russell-Murphy thought that Mr Golding was able to instruct Mr Thomson concerning LCF. More generally the evidence shows that the Surge representatives and Mr Russell-Murphy thought that Mr Golding could override Mr Thomson and they often looked to Mr Golding to instruct Mr Thomson what to do when they faced an obstruction.

345. This is consistent with their understanding at the outset of the arrangement. Ms Venn said in evidence that she thought Mr Golding was the kingpin at their first meeting in February 2015. Mr Careless agreed in his evidence that on meeting Mr Golding he thought he was in charge of LCF and that Mr Golding was "very important" to LCF. This view is also evidenced by the email of 25 January 2016 referred to above.

346. There is further significant evidence relating to payments that were made by Surge originally to Mr Thomson and then to Mr Golding. I shall make findings about these below. As explained there, I have concluded that these payments were secret commissions paid by Surge to maintain Surge's high rates of commission from LCF. Surge started by making payments to Mr Thomson, and then (from September 2017 onwards) to Mr Golding: but at the same time as the payments to Mr Golding started, those to Mr Thomson ceased. I find that Mr Golding was able to demand this because he was the ultimate controller of LCF.

347. There is a more specific point relating to the commissions paid to Mr Golding which shows the understanding Mr Thomson and the Surge Defendants had about Mr Golding's influence over LCF. In July 2018 they were considering a way of restructuring this arrangement by reducing the interest paid by the borrowing companies to LCF by 1%. That could only have happened if Mr Golding was closely connected with LCF. If the borrowers had been independent, there could have been no reason for it to agree to reduce its interest rates to compensate Mr Golding for what was (on the face of it) a private arrangement he had with Surge. More details of this transaction are given in [1340] below.

348. In his oral evidence, Mr Thomson said that Mr Golding had no influence in LCF after the shares in LCF were transferred to him in July 2015. He referred repeatedly to the buy-out agreement. I have already found that there was no such agreement. When asked about the various episodes where Mr Golding had been involved in the business after July 2015, Mr Thomson said that Mr Golding was ready to assist and use his expertise as a businessman and that he, Mr Thomson, looked to Mr Golding for assistance as an adviser.

I am unable to accept this. The documentary records show that the Surge representatives and Mr Russell-Murphy continued to regard Mr Golding as the controller of LCF. This reflected reality. Mr Golding told Mr Thomson what to do in relation to LCF and Mr Thomson did was he was told. He may have resented this, but it is what happened.

349. I find that Mr Golding continued to have ultimate control over the affairs of LCF. Mr Thomson was accustomed to and did act in accordance with his instructions or directions. Mr Thomson was rewarded for this by his continuing 5% interest in the London Group (which led to the payments made to him personally – see below) and by being given the shares in LCF.

The de jure directors of LCF

350. As already explained, Mr Hume-Kendall was a director of LCF from 12 July 2012 to 15 August 2013.

351. Mr Thomson was a director from 15 August 2013 to date. He was also company secretary for the same period.

352. Mr Paul Sayers was a director from 5 September 2013 to 10 August 2015.

353. Mr Michael Baldwin was a director from 1 October 2015 to 9 June 2016.

354. Ms Katherine Simpson was a director from 1 October 2015 to date. Mr Thomson described her role in evidence as being concerned with risk and operations.

355. Mr Martin Binks was a director from 30 October 2015 to 24 August 2016.

356. Mr Kevin Maddison was a director from 1 February 2017 to date. Mr Thomson said that his role was concerned mainly with IT.

357. Mr Floris Huisamen (also known as Kobus Huisamen) was a director from 1 July 2016 to date.

358. Mr Thomson was the CEO of LCF. He said in his evidence that he was the only true executive director until mid-2018. But Mr Thomson also said in his evidence that the other directors were equally responsible for lending decisions. The documentary record shows that Mr Thomson signed the various loan agreements with the borrowers and approved drawdown requests. The documents do not support Mr Thomson's contention that the other directors made any independent lending decisions. Although Mr Thomson suggested that Mr Huisamen was in charge of monitoring borrowers, there is no evidence that LCF reviewed the financial position or performance of its borrowers. I find that Mr Thomson was in charge of all significant lending decisions and certainly knew about them.

359. Mr Huisamen became an employee of LCF in January 2016 (and a director in July 2016). He was appointed from January 2016 as the compliance officer of LCF. He had previously worked at Sentient Capital, an advisory firm.

360. He was an authorised person for the purposes of section 21 of the Financial Services and Markets Act 2000. That provision requires the contents of any communication which is an invitation or inducement to engage in investment activity to be made by or approved

by an authorised person. He therefore had the role of confirming that LCF's communications with the public complied with the applicable FCA rules.

361. It was common ground that Mr Huisamen has subsequently been sanctioned by the FCA. But that happened well after the collapse of LCF, and I do not draw any inferences from it in this judgment.

362. In his evidence, Mr Thomson said that Mr Huisamen was in charge of risk compliance, oversight of Surge, financial promotions, oversight of borrowers and regulatory reporting. I have already explained that there is no evidence of any system of financial monitoring of the borrowers. Mr Thomson was in charge of all lending decisions.

363. Mr Huisamen had given approval for the content of LCF's communications for the bond issues while he was at Sentient, before joining LCF as a director.

364. Mr Huisamen vetted external communications by LCF relating to the bonds. He reviewed the Information Memoranda, the website and the brochures published on it. He also listened to samples of calls of Surge employees and reviewed webchat transcripts. The communications between him and Surge were extensive and detailed. I have specifically reviewed the table of communications relied on by the Surge Defendants in their closing submissions.

365. These show the following: Mr Huisamen actively engaged with Surge throughout its relationship with LCF. Mr Careless wanted him to work on Blackmore's bonds; Mr Huisamen approved the script of marketing videos; he approved the content of the website; he oversaw a call monitoring system and from 4 August 2016 had access to all of Surge's call monitoring; he listened to calls from each account manager twice a month from 17 August 2016; on 28 July 2016 he asked to see all the templates used by Surge; he confirmed on 12 January 2017 that he was ultimately responsible for signing off the materials used by Surge from a compliance perspective; on 24 April 2017 he confirmed that Surge's marketing communications were in order; in May 2017 he approved template letters used by Surge; on 27 July 2017 he rejected some amendments proposed by Ms Venn; he dealt with questions from Surge staff on 24 August 2017 regarding the content and wording of marketing materials; and on 20 March 2018 he provided account managers with a document containing Q&As. I shall return to his involvement below.

Discussions with auditors about the Sanctuary loan agreement

366. This topic is conveniently addressed at this stage, as there were relevant communications about it in the course of the audit of LCF's accounts to 30 April 2015.

367. The limit under the SAFE-Sanctuary loan agreement was £675,000. By April 2015, Sanctuary PCC owed almost £1.3 million to SAFE.

368. In October 2015, SAFE (by now called LCF) was being audited by Oliver Clive & Co. On 22 October 2015 they asked Mr Thomson for a copy of the loan agreement with Sanctuary PCC. They also asked for an explanation of why the money loaned to Sanctuary PCC was being paid to One Monday.

369. On 23 October 2015 Ms Maddock (who was helping Mr Thomson compile the information) sent him a copy of the signed 1 October 2013 agreement.

370. Shortly afterwards, Mr Thomson emailed the auditors saying that Ms Maddock had said that she did not have a copy of the agreement and that he was out of the office. I find that he realised that sending over the 1 October 2013 agreement would have raised hard questions, as the lending was beyond the limit.

371. Mr Thomson then created (or caused to be created) a backdated loan agreement dated 2 October 2013 with a limit of £2 million. Mr Thomson provided a version, signed on its face by Mr Thomson and Mr Peacock, to LCF's auditors on 26 October 2015.

372. I find that Mr Thomson did this to give the false impression to Oliver Clive & Co that Sanctuary PCC's borrowing was within the facility limit agreed with SAFE. It was created to deceive the auditors.

373. Mr Thomson said in his oral evidence that documents (such as this one) were routinely backdated innocently to record what had already been agreed. I reject this explanation. Mr Thomson deliberately withheld the actual agreement (of 1 October 2013) from the auditors and replaced it with the forged version (dated 2 October 2013) so he could pretend that the borrowing was within agreed limits. He knew he was deceiving the auditors and that what he was doing was not innocent.

374. Mr Thomson also said in his evidence that the increase to £2 million had been orally agreed only a few weeks after the original facility agreement; and that the original facility agreement had been lost and that he had sought to reconstruct the revised agreement in 2015. This on-the-hoof account was painfully poor. The original had clearly not been lost. Ms Maddock sent it to Mr Thomson on 23 October 2015, an hour before he told the auditors it could not be found. The backdated agreement (for £2 million) was dated 2 October 2013, which is only one day after the actual agreement (for £675,000) and Mr Thomson was unable to explain how the limit could have gone up more than three times in a single day. I find that Mr Thomson deliberately lied about this episode. As well as showing him to be a casual liar, it also demonstrates his readiness to create forgeries with the intention of misleading auditors. Both then and as a witness, he was prepared to say anything he thought might advance his case.

LCF's accounts for the period ended 30 April 2015

375. On 9 November 2015 LCF produced accounts for the period ended 30 April 2015, audited by Oliver Clive.

376. The Directors Report, signed by Mr Thomson, stated that the principal activity of the company was the raising and lending of funds.

377. The income statement showed turnover for the year ended 31 March 2015 of £182,610 and profit of £29,294. For the period ended 30 April 2015 turnover was £14,072 and profit £782.

378. The statement of financial position showed net assets of £40,944 as at 30 April 2015.

379. Turnover was described in the notes as "interest receivable".

380. Bonds outstanding were shown as £1,193,374.

The Bonds issued by LCF

381. LCF issued bonds under a number of series with various durations. There were 11 series of bonds and 4 series of ISA bonds.

382. They are shown in the following table (prepared by Dr Okongwu).

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Series 1 Bonds	2013	£ N/A	N/A	N/A %	N/A	N/A %
Series 2 Bonds	Sep 2013 - Jan 2016	N/A	1, 2 and 3 years	8.50	Quarterly	21.8
Series 3 Bonds	Dec 2015 - Oct 2018	25,000,000	1 year	3.90	Payable on redemption	41.8
Series 4 Bonds	Nov 2015 - Dec 2018	25,000,000	2 years	6.50	Semi annually	25.3
Series 5 Bonds	Dec 2015 - Feb 2017	25,000,000	3 years	8.00	Quarterly	21.5
Series 6 Bonds	Feb 2016 - Dec 2018	25,000,000	2 years	6.50	Payable on redemption	25.4
Series 7 Bonds	Jan 2016 - Dec 2018	25,000,000	3 years	8.00	Payable on redemption	21.0
Series 8 Bonds	Feb 2017 - Sep 2017	25,000,000	3 years	8.00	Quarterly	21.5
Series 9 Bonds	Feb 2014 - Sep 2015	700,000	5 years	11.00	Annually	21.4
Series 10 Bonds	Aug 2017 - Dec 2018	50,000,000	3 years	8.00	Quarterly	21.5
Series 11 Bonds	Jun 2018 - Dec 2018	50,000,000	5 years	8.95	Annually	18.1
Series 1 ISA Bonds	Dec 2017 - Jul 2018	50,000,000	3 years	8.00	Quarterly	21.5
Series 2 ISA Bonds	Dec 2017 - Dec 2018	50,000,000	2 years	6.50	Semi annually	25.3
Series 3 ISA Bonds	Jun 2018 - Dec 2018	50,000,000	5 years	8.95	Annually	18.1
Series 4 ISA Bonds	Jun-2018 – Dec 2018	50,000,000	3 years	8.00	Quarterly	21.5

383. Column (1) is the name of the series. Column (2) is the period over which each series was sold. Column (3) is the amount offered under the series. Column (4) is the tenor of the bond. Column (5) is the coupon. Column (6) is the payment dates of the coupon. Column (7) represents the annualised rate of return that would have had to be charged by LCF to borrowers to match the liabilities to pay principal and coupons to bondholders. It is calculated by adding a margin of 1.75% to the coupon payable to borrowers, using the payment frequency and redemption date for the various series. (As explained below, LCF represented that it was adding this margin to its outward loans.) The rate of return takes account of the amount that borrowers would have to repay to meet the 25% fee payable to Surge (or 22.5% in the case of the Series 11 and Series 3 ISA bonds). These figures ignore the 2% arrangement fee charged by LCF to borrowers, so the required rate of return would have been higher.

The professionals listed in the IMs

384. Most of the Information Memoranda ("the IMs") by which the bonds were marketed referred to professionals.

385. The IM for Series 2 included a letter from Buss Murton dated 20 July 2015.

386. The IM for Series 3 stated that it was approved for the purposes of section 21 of FSMA by Sentient Capital. The solicitors to the company were stated as Buss Murton and the solicitors to the fundraising were Lewis Silkin LLP. The accountants were Oliver Clive. The security trustee was GST, and the payment services provider was GCEN.

387. The same details appeared in the IMs for Series 4 to 8.

388. Series 10 still carried the name of Sentient on its cover, but Sentient was not referred to in the text. Otherwise, the advisors were the same.

389. From Series 11, Sentient's name no longer appeared, and EY were listed as the auditors. The ISA bond IMs gave the same details as the Series 11 IM.

390. Lewis Silkin reviewed the text of the various IMs. I was not however taken to evidence showing in any detail the process that was undertaken. Nor did I hear from any witnesses from Lewis Silkin. There was no evidence to show that the auditors participated in the production or review of the IMs.

Statements made to bondholders

391. In para 7 of the Re-re-re-amended Particulars of Claim ("the RRRAPOC") the Claimants allege that, in order to induce members of the public to become bondholders, LCF represented that:

    (1) Money raised from bondholders would be lent by LCF to numerous unconnected small and medium sized enterprises in the UK (or, from around August 2017, UK businesses) in arm's length transactions.

    (2) Before agreeing to make any loan to any prospective borrower, LCF conducted due diligence to satisfy itself that the borrower would be able to pay interest on the loan and to repay the principal amount of the loan on maturity.

    (3) LCF generated income to cover its overheads and to pay interest on the bonds by charging borrowers a one-off fee equal to 2% of the amount of the loan and interest in the region of 10% per annum on the amount of the loan until majority.

    (4) LCF only lent sums to creditworthy borrowers which were established small and medium sized enterprises (or, from around August 2017, UK businesses) with a strong payment covenant.

    (5) No sums were ever (nor ever would be) advanced to any borrower before the execution of a legally binding loan agreement between LCF and the borrower.

    (6) Every prior loan had been (and every future loan would be) fully secured by debentures and other security agreements in favour of LCF over assets of the borrower with the value materially in excess of the amount of the loan.

    (7) Bondholders' interests would be protected by an independent security trustee which had no connection with LCF or any of its borrowers.

    (8) An investment by bondholders in Bonds was a secure investment which was capable of generating high returns, often in the region of 8% per annum or higher.

392. The Claimants contend that these representations were expressly or impliedly made in the IMs and brochures. They also rely on statements made in telephone calls or meetings or via LCF's website.

393. In closing submissions, the Claimants grouped the alleged representations in a slightly different order. This section contains my findings about these allegations.

394. The first group was a series of alleged representations about the value of LCF's security.

395. I am satisfied that LCF represented that the value of security substantially exceeded the amount of its loans, which were accordingly fully secured. LCF's first information memorandum stated that "LC&F are offering to provide asset security to 150% of the value of all monies raised". LCF also said that "loans made by LC&F will have a maximum value of 75% of the value of the assets over which security is granted". This representation was repeated in every information memorandum from series 3 onwards, including in all the ISA bond series. It was also contained in every LCF brochure ("no more than 75% loan to value"). I am satisfied that there was a representation that loans would not exceed 75% of the value of security.

396. LCF also made specific statements about the value of the assets which it said secured LCF's lending. For example, on about 9 February 2017, LCF's website was updated to say that LCF had security over assets worth more than £215 million ("Total value of security held exceeds £215m"). LCF advertised in the Times on 3 May 2017 stating, "Value of security £215m, Loan to value ratio 25.9%". Mr Thomson approved this in advance. This advert appeared subsequently in the Financial Times, the Telegraph and the Times.

397. Mr Thomson also told Surge's employees that they could tell prospective bondholders that LCF had security over assets worth more than £215 million. The figures relayed by Surge to bondholders increased over time, ultimately to £685 million (see e.g. email of 26 October 2018 from Mr Phillips to Dr Law).

398. The second group of alleged representations concerned due diligence about its borrowers.

399. I am satisfied that LCF represented that it was performing robust due diligence before making any loans, such that it was properly satisfied that borrowers would be able to repay any loans and interest, and that LCF only lent sums to creditworthy borrowers.

400. As to this, the first LCF investment memorandum stated, "[i]n addition to the physical security identified, LC&F will conduct a full financial review of every application" and "if required will retain the services of Moore Stephens and Baker Tilly to provide further financial analysis prior to any decision to lend being made". Later IMs said that full due diligence was being carried out ("LC&F has chosen to take a more hands-on approach to its loan commitments not only by conducting full due diligence prior to lending but also with the on-going monitoring of the loans it makes") and that a financial review of each borrower was conducted prior to lending decisions ("When a company is referred to LC&F, its borrowing application and associated financials and assets will undergo a full financial review, lending assessment and, if required, a further financial analysis via an independent accountant and or surveyor will be undertaken prior to any decision to lend being made").

401. The review process was said to include a number of elements, including a "review of historical financial information … over the last three years" and "an appraisal of property assets … by an independent surveyor". LCF was said only to "make loans to UK businesses that it considers creditworthy, that meet LC&F's lending criteria and that have realistic and robust repayment proposals."

402. The IMs for the ISA bonds contained the same statements.

403. The statements in LCF's brochures were substantially the same, stating that LCF only lent to "creditworthy" businesses with "realistic and robust repayment proposals" and that LCF "endeavoured to create multi-layers of security and safeguards to protect Bond Holders' capital, which range from upfront and ongoing due diligence on prospective borrowers to taking charges over borrowers' assets".

404. Prospective bondholders were also told by Surge that LCF conducted due diligence and would only lend to creditworthy borrowers. Examples are: "Every company we loan to has to go through a very strict lending criteria before we would consider loaning to them", and "Our minimum loan amount is half a million pounds so it's quite bulky, that means we don't lend to start-up companies due to the risk. They have to be established companies with a track record, good credit ratings".

405. Surge's sales team employed approved scripts stating that LCF applied "strict lending criteria" and was "currently rejecting over 60% of companies that apply". They said that LCF only made loans to established companies with a good credit history: "we have a strict lending criteria before lending takes place (No startup companies, they must have been established for at least 3 years and must have a good credit history)". LCF was said to have "strict lending criteria": "We are a corporate financier and we lend money to small/medium size businesses. When we do so we have a strict lending criteria"; "We have never had a default due to our strict lending criteria"; "We have a very strict lending criteria and are currently rejecting over 60% of the companies that approach us".

406. The third group of alleged representations concerned lending to numerous unconnected SMEs.

407. LCF stated in its IM that its business was to lend to SMEs. The heading "Summary of LC&F's business" was followed by the heading "Sources of finance for SMEs". LCF's materials all began with an explanation of the requirement for finance in the SME market. They explained that LC&F's business was lending to SMEs ("The Directors of LC&F believe that the disparity between the demand for finance from SMEs and the availability of that finance has created an opportunity for LC&F and private investors"); and that LCF met lending demand in the SME market ("LC&F has developed a business model whereby it … provides private investors the opportunity to earn returns by investing the bonds issued by LC&F and it enables LC&F to help meet the lending demand from the SME sector").

408. It went on, "LCF has spent the last two years successfully proving this concept on a small scale. The Directors believe LC&F is now ready to expand its operations by issuing more bonds in order to raise additional finance thereby enabling it to increase the number and value of loans it makes to the SME sector. LCF has, using the network of contacts its Directors have developed over their careers, been able to develop relationships with numerous professionals in the financial, accounting and legal professions and it is confident that, using these relationships, it will be able to source additional lending opportunity which will enable it to deploy the proceeds of further bond issues and that the loans arising from those lending opportunities can be made to SMEs on commercially competitive terms".

409. In addition, the sales team at Surge told the public that there were numerous loans. For instance:

i. Mr Thomson had confirmed to Mr Russell-Murphy on 3 August 2016, when answering "the points the AM's [account managers] have raised", that there were "around 120 loans currently issued".

ii. The documents show that LCF's representatives told Surge's sales team in or around June 2017 that LCF was lending to around 150 companies.

iii. There was a post on Money Saving Expert on 11 July 2017 which said that the marketing team claimed that LCF had lent approximately £15 million to approximately 120 SMEs.

iv. That this was part of the sales information is confirmed by the reaction of members of Surge's sales force to receiving LCF's 2017 annual report in February 2018 (explained further below). Ms Baldock sent an email on 20 February 2018 saying that they had been quoting lending to hundreds of clients. I find that Surge's salesforce had been telling members of the public that there were at least 120 (and possibly c.150) borrowing companies since June 2017.

v. This is supported by the email from Ms Venn of 21 February 2018 which said that the salesforce had continued using the information given by Mr Thomson in May 2016, including that there were 121 loans.

410. I find that the natural and obvious meaning of LCF's statements about lending on commercially competitive terms in the SME market was that LCF was lending to numerous unconnected SME borrowers pursuant to arm's length transactions. As already explained LCF represented that it had "strict lending criteria" for dealing with "applications" ("LC&F will conduct a full financial review of every application"; "When a company is referred to LC&F, its borrowing application and associated financials and assets will undergo a full financial review"). I find that the natural and ordinary meaning of these words was that LCF was lending to numerous commercial entities which were not connected with LCF, which is why LCF invited and considered lending applications.

411. Counsel for Mr Thomson contended that the words "independent" and "arm's length" were not used in the IMs or other communications. This is correct. But the obvious and natural impression given by what was stated was that borrowers would make applications, would have to go through a rigorous due diligence process and meet strict lending criteria – in short, would-be arm's length, unconnected borrowers. This impression was supported by the communications that many of the companies who had approached LCF and had been rejected.

412. The matter may be assessed by asking whether a reader of LCF's communications would have supposed that it would be open to LCF to advance money to a connected company in which its CEO had a beneficial interest, and where the other beneficial owners had been and continued to be his close business associates. The references to lending on commercial terms, strict lending criteria, due diligence, and monitoring of borrowers, created a clear impression of lending to independent arm's length borrowers.

413. The next group of alleged representations concerned the terms on which lending would be made.

414. I am satisfied that LCF represented that no sums had been or would be advanced to any borrower before the execution of a legally binding loan agreement and security documents between LCF and the borrower.

415. LCF's IMs stated that LCF never advanced loans without putting signed loan and security agreements in place ("Investor funds … will only be remitted to borrowers when all loan documents and security are in place"; "Once a potential Borrowing Company has been assessed as creditworthy, agreed security is taken and legal documents are prepared and signed. Only when all legal and security documentation has been completed to LC&F's satisfaction, will funds be transferred to the Borrowing Company"). The same representations were contained in the IMs for the ISA bond series and in LCF's brochures.

416. LCF also told prospective bondholders that LCF's loans would be subject to binding security. For instance: "The asset backed aspect protects the loan money. So for every loan we issue, we take a legally binding first charge over assets"; "For each loan that we issue, we take a legally binding first charge"; "As security against the loan, we take a legally binding first charge over assets worth at least 25% more that the loan value". Surge's sales team often referred to the presence of security.

417. The next group of alleged representations concerned the existence of an independent security trustee.

418. I am satisfied that LCF represented that the security for the lending would be held by an "independent security trustee", i.e. one which had no connection with LCF or its borrowers.

419. LCF's brochures claimed that the security would be held by an "independent security trustee".

420. Surge's sales team also stated that there was an independent security trustee. Ms Baldock told prospective investors on 3 December 2015, "All bond holder funds are protected by an independent security trustee who manages the security held for the investor". Mr Allen of Surge told prospective investors on 13 June 2016, "An independent security trustee, Global Security Trustees Ltd, holds a charge over all LCF's assets (to include any new security LCF takes for additional loans made) which it holds on behalf of all bond holders".

421. These statements were also included in an LCF fact sheet, which Mr Russell-Murphy circulated to Surge's sales teams on 4 January 2016 and again on 14 January 2016: "These assets are then held in the form of a debenture by Global Security Trustee's, a third party company who ensures there is always adequate security in place to protect the bond holders".

422. There are numerous examples of Surge's sales team telling prospective investors about the role of the independent trustee, among other things. Mr Russell-Murphy emailed prospective investors to tell them about the "third party" GST, "who ensures there is always adequate security in place to protect the bondholders".

423. The final group of alleged representations concerned the business model of LCF.

424. LCF made numerous representations about the relationship between its lending activities and its generation of income, which gave the impression that LCF was a genuine lending business. LCF represented that it generated income and profit from lending activities, to enable it to pay high returns, based on its lending to small and medium sized enterprises in the UK and that sums invested by bondholders were capable of generating high returns. I also find that it represented that liabilities to existing bondholders were being paid from income generated from those lending activities. I find that these representations fall within the pleadings in RRRAPOC sub-paras 7 (3), (4), and (8). This finding is based on the following statements:

   i. The first LCF IM stated that "provision of finance to regional business development will … provide a secure high rate of return for investors". Subsequent IMs stated, "Income is generated by charging a Borrowing Company lending fees of 2% and making an interest 'turn' on the funds LC&F lends". In other words, LCF's lending activities generated profits: "the interest payable pursuant to these loans is sufficient to enable LC&F to service its obligations pursuant to the bonds issued by it and to generate a profit for LC&F."

   ii. The same statements appeared in the IMs for the ISA bond series and brochures ("[LCF's] principal activity is to identify opportunities in structured finance within the UK SME sector and to generate income via loan interest and associated fees"; "To continue to grow a profitable commercial loan business to meet the increasing demand of successful, but cash-starved UK SMEs").

   iii. Prospective bondholders were told that LCF's income came from its lending activities. Surge's sales force stated at various times, "We make our money through the lending side of the business, not from investors"; "We make our money solely from the corporate loans that we make to companies"; "we make our money on the loans we issue"; "Currently, our loan book is approximately 100 SMEs".

   iv. It was stated repeatedly that LCF charged these borrowers high interest rates, which enabled LCF to pay high interest rates to bondholders. For instance: "LCF's business model is to then lend the bond funds out to companies at a premium rate"; "It is because of the interest rates charged to our borrowers we are able to pass on the benefits to our investors"; "We are a corporate financier, loaning money to UK businesses at around 12-20% on average"; "We typically charge borrowers between 12% and 20% per year which means we are able to pass on higher interest rates to our investors".

   v. The risk to investors was said to be a big drop in the value of the security combined with numerous defaults. This was presented as a theoretical or highly implausible risk: "Mathematically it's possible … But we would argue it is highly unlikely". "A worst-case scenario"; "highly unlikely, but technically possible".

   vi. Mr Russell-Murphy specifically represented that LCF's bonds were a secure investment and that it had a successful lending business. He said that LCF always took a personal guarantee from the borrower's owners and that the independent security company monitored the value of the security to ensure that it was adequate to cover LCF's loan book. Mr Russell-Murphy also said that LCF was "fully authorised and approved by the financial conduct authority".

vii. Mr Russell-Murphy said that LCF was always flooded with applications for loans from its network of brokers and financial advisors and that LCF's lending team were therefore able to "cherry pick the best of the bunch". He also said LCF was lending to hundreds of different businesses to diversify risk. He said that these loans were short-term loans, typically more than 6 months but no longer than 12 months.

425. I also find that LCF represented by these statements (by implication) that the only charges to borrowers were the one-off 2% fee and interest on the loan – which was represented to be 12%-20%. LCF did not disclose the 25% fund-raising fee which was passed on to borrowers as explained above.

426. Counsel for Mr Thomson submitted that the representations contained in LCF's communications were not properly identified in the pleadings. I do not think there is anything in this. In my judgment each of the representations I have found to be established falls within paragraph 7 of the RRRAPOC.

Records maintained by LCF

427. Mr Thomson explained in his evidence that LCF monitored its loans and the value of the underlying assets in a series of spreadsheets. Mr Thomson relied on these in closing submissions.

428. One group of spreadsheets sets out the amounts lent to the borrowing companies and listed the specific drawdowns. The spreadsheets showed the gross amount borrowed (which included the 25% payable to Surge), and the net funds sent to the borrowers. This was not in reality part of a monitoring process. The spreadsheets simply recorded the amounts owing.

429. Another group of spreadsheets showed the security position for the borrowers. These set out values for the security (including some the values referred to earlier in this judgment and which I have found were (to Mr Thomson's knowledge) over-inflated).

430. There were also some spreadsheets containing profit and loss forecasts. For instance, there was a spreadsheet for the "Waterside Project" for the following 6 years. This included figures, including net sales receipts of c. £8 million in year 1, c. £3.4 million in year 2, c. £8.8 million in year 3, and c. £25 million in year 4. The projections were for an ambitious building and refurbishment project at Lakeview, including new lodges and the hotel, which was to start immediately. Mr Thomson knew that these developments were not in fact taking place. This spreadsheet is therefore based on a development which Mr Thomson knew had not occurred and was not imminent.

431. There was also a spreadsheet appearing to show 10 potential borrowers, including Elysian RGL. The total proposed appears to be c. £3.6 million. They include a bloodstock business and a gold business. These loans did not however occur. There is no evidence as to their connections, if any, to Mr Golding or Mr Hume-Kendall (other than Elysian RGL – see further below). The details about the proposed borrowers are negligible.

432. These spreadsheets record very rudimentary information. They do not justify Mr Thomson's submission that LCF was properly keeping track of the investments it had made. There was no meaningful analysis in them of the financial position or performance

of the borrowers or of their ability to repay. There was no information explaining how the borrowers were to meet their interest obligations under the loans. The security values were based on the inadequate information already addressed above. As explained there, no proper lending business would have relied on the various reports and valuation documents supplied to LCF: they were not Red Book valuations; they were not addressed to LCF so that LCF could rely on them; they were often drafts; they contained unrealistic assumptions; and they were often methodologically flawed. All that would have been obvious to Mr Thomson who had a banking background.

Introduction to the SPA transactions under which payments were made to Mr Thomson, Mr and Mrs Hume-Kendall, Mr Barker and Mr Golding

433. As already explained, a substantial proportion of the money advanced to borrowers by LCF was used to make payments to Mr Thomson, the Hume-Kendalls, Mr Barker and Mr Golding (and others). These payments were made under various sale and purchase agreements or SPAs. These have been called the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPT SPA and the LPE SPA. Some of these consist of more than one part.

434. The relevant Defendants say that these were genuine commercial transactions for the sale and purchase of valuable assets and that, to the extent they received payments, this was the price paid under the deals.

435. The Claimants contend that the SPAs were not genuine commercial deals, but were complex devices, constructed to conceal the misappropriation of funds by the recipients.

436. The following sections address each of the SPAs and the sums which were received by the relevant Defendants under them.

The Lakeview SPA

437. The Lakeview SPA was executed on 27 July 2015 (though no signed copy has been disclosed).

438. Under the Lakeview SPA, the shares in LCCL were sold to London Trading & Development Group Limited (London Trading) for £2,105,263.10.

439. By that date, the legal owners of the shares were Mr Thomson and Mrs Hume-Kendall. The beneficial interests in the shares were at that time held for Mr Golding (71.25%), the Hume-Kendalls (23.75%) and Mr Thomson (5%). The Claimants contended that the 23.75% was held by Mrs Hume-Kendall for Mr Hume-Kendall but it is unnecessary to reach a conclusion on this issue.

440. I am however satisfied, whatever the ownership position between them, Mr Hume-Kendall made decisions about the Hume-Kendall shareholding and seems to have done so without the prior involvement of Mrs Hume-Kendall. I shall proceed on the basis that the Hume-Kendalls regarded the 23.75% as their property.

441. In April 2015 Mr Hume-Kendall and Mr Golding were considering selling the shares in LCCL to a company controlled by them. Initially it was intended that Mr Thomson and Mrs Hume-Kendall would sell their shares in LCCL to London Trading for £6.75 million, to be paid by loan notes repayable in 8 years.

442. I also find that it was understood by the relevant Defendants that the money to pay for the share purchases was going to come from LCF (through loans). There was no other anticipated source for it. This understanding was indeed recorded in the Golding-SHK Agreement, of which Mr Hume-Kendall, Mr Golding, Mr Barker, Mr Sedgwick and Mr Thomson were aware.

443. However, it was subsequently decided that smaller sums (£1.5 million to Mr Golding, and £750,000 to Mr Thomson and Mrs Hume-Kendall) would be paid in a shorter period. The proposed price was then revised again to £2,105,263.10, on the basis that Mr Golding would receive £1.5 million for his share of 71.25%, Mrs Hume-Kendall would receive £500,000 and Mr Thomson would receive £105,263.15. This was embodied in the Lakeview SPA.

444. Mr Sedgwick prepared the drafts of the Lakeview SPA. Mr Thomson was provided with drafts and emails about it. He knew that the shares in LCCL were being sold in return for loan notes issued by London Trading. He executed the Lakeview SPA as one of the sellers.

445. Mr Golding was also aware of the decision to sell the shares in LCCL. He was of course the majority beneficial owner of the LCCL shares, and no decision would or could have been taken without his approval. On 15 July 2015 Mr Sedgwick prepared a memo for Mr Golding explaining the then proposed transaction.

446. Mr Golding was aware of the terms of the Lakeview SPA as the major beneficial owner of LCCL. He was provided with drafts of the agreement by Mr Sedgwick, Mr Thomson and Mr Barker.

447. None of the Defendants has disclosed a signed copy of the Lakeview SPA, but the contemporaneous documents show that it was executed and that, as payment, loan notes were issued to Mr Thomson and Mrs Hume-Kendall on 27 July 2015.

448. I am satisfied that there was no commercially justifiable basis for the consideration payable by London Trading in return for the shares in LCCL.

    i. The assets held by LCCL were worth between £4 million and £4.55 million at that date. I do not think any of the relevant Defendants believed that the market value was higher than that at that date.

    ii. The only report which mentioned a higher value was the GVA report of December 2014 for International Resorts. But the £12.4 million value was on the special assumption that the proposed business plan would be achieved in full and without delay. That had not and was not going to happen. The other value (of £7.15 million) was on the basis that LCCL owned 26 lodges, when it in fact owned only nine. All of the relevant Defendants knew these facts.

    iii. At the time LCCL had liabilities of £6.5 million, including £1 million to Mr Golding, £1.4 million to Ortus, and £4.1 million to LUKI.

    iv. I am satisfied that LCCL's liabilities exceeded its assets, and its shares were worthless.

v. Even taking the valuation at £7.15 million (which I do not think any of the parties in fact considered reliable) the net assets would not have exceeded c. £650,000.

449. I am satisfied that Mr Thomson and Mr Golding knew these facts.

450. There is no evidence that there was any negotiation of the price of the shares.

451. I am satisfied that it was not a commercially justifiable deal. I am also satisfied that the relevant Defendants did not think it was commercially justifiable. It was a means for extracting value from the ownership of the shares and making payments to the relevant Defendants personally.

452. The buyer of the LCCL shares under the Lakeview SPA was London Trading. As of 8 July 2015, the shares in London Trading were held by International Resorts Partnership LLP, which held those shares on trust for Mr Golding (71.25%), Mr Hume-Kendall (23.75%) and Mr Thomson (5%). This is shown by a trust deed dated 8 July 2015.

453. I find that, at about the time of the Lakeview SPA, an agreement or arrangement was reached between the relevant Defendants that the shares in London Trading would be beneficially held between Mr Golding (as to 45%), Mr Hume-Kendall (45%), Mr Thomson (5%) and Mr Barker (5%) once the LCCL transaction had completed. But it was also agreed that the consideration under the Lakeview SPA would be paid according to the old ratios (71.25%, 23.75%, 5%, with nothing for Mr Barker). This is shown by the terms of the Golding-SHK Agreement (see above).

454. The Claimants contend that there was therefore no change in the identity of the beneficial owners of the shares in LCCL. They say that it was a sale by the beneficial owners to themselves. I find that this is broadly, but not precisely, correct. Mr Thomson and Mr Golding had a beneficial interest in LCCL shares before the sale and continued to have a beneficial interest in LCCL after the sale, but Mr Golding's interest in London Trading was reduced, the Hume-Kendalls' interest increased, and Mr Barker was given a 5% interest. What can be said is that the same associated group of individuals was interested before and after the sale of the shares.

455. Mr Thomson was a director of London Trading from 19 February 2015 to 13 January 2016 and he knew of the beneficial ownership of the shares in London Trading, including his own 5% beneficial ownership (it was set out in the Golding-SHK Agreement). I have already rejected Mr Thomson's evidence that he had sold his interests in London Trading (and the other London Group companies) under the alleged buy-out agreement of 15 July 2015.

456. I specifically find that Mr Golding knew of the extent of his beneficial interest in LCCL before the transaction and his interest (and those of the other relevant Defendants) in London Trading after the transaction. The latter division of interests (45:45:5:5) was reflected in the Golding-SHK Agreement.

457. On 18 August 2015 Mr Sedgwick emailed Mr Hume-Kendall and Mr Barker (cc. Mr Thomson and Mr Golding) with a draft revised version of the Lakeview SPA with a new clause 3.4, which contained a mechanism for allowing a retrospective increase in the price by reference to the values of the claims defined as the "Telos claim" and the "Timeshare claim". This revised version of the Lakeview SPA was never signed.

458. I find that the intention to include this revised mechanism followed meetings in the week before the 18 August 2015 email. On 18 August Mr Sedgwick referred to the meetings and said that the major question was "whether we amend the price being paid by LTDG for the shares in [LCCL]". I find from the fact that the email was sent or copied to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding that they all took part in the meetings.

459. Mr Thomson was copied into emails about the proposed revision of the purchase price. He also knew that if there was a revision he would receive more money personally and he is likely to have read them.

460. Another draft of the Lakeview SPA was prepared by Mr Sedgwick on 6 October 2015. This included a revised proposed clause 3.4, which also made reference to potential value in the "Magante Asset", which was defined to mean an agreement between LCCL and Sanctuary PCC, by which LCCL agreed to fund the development of the site at The Beach, in consideration for a share of the proceeds of sale of that site upon sale. This revised draft of the Lakeview SPA was not executed either.

461. I find that the reason for these further drafts must have been discussions between Mr Hume-Kendall, Mr Golding, Mr Barker and Mr Thomson for the consideration under the Lakeview SPA to be increased. Mr Sedgwick would not have produced them without their agreement.

462. These drafts and the fact that there were discussions about them is itself telling. If the Lakeview SPA had been a genuine commercial contract, London Trading, as the buyer of the shares, would not have countenanced revisions. Its directors would simply have insisted on the contract and refused to pay more. The existence of these drafts supports my conclusion that the Lakeview SPA was not a genuine commercial transaction.

463. In any event, these so-called assets could not have justified any retrospective increase in price:

   i. The Telos claim: this concerned the assignment from Telos to LCCL of potential claims against Telos' directors. But the assignment long predated the execution of the Lakeview SPA on 27 July 2015. Hence any value in this asset would already have been included in the purchase price.

   ii. The Timeshare claim: this concerned a dispute between LCCL and the timeshare club at the Lakeview site relating to contributions to common costs, and certain invoices for that purpose totalling £445,000, also predating the Lakeview SPA. Any value in this asset would also already have been included in the purchase price.

   iii. The Magante Asset: this was defined as explained above. But there was never any agreement between LCCL and Sanctuary PCC, by which LCCL agreed to fund the development of the site at The Beach, in consideration for a share of the proceeds of sale of that site upon sale. No such agreement has been disclosed by any of the Defendants and I find that such an agreement never existed for several reasons: (a) the company holding the contractual rights in respect of The Beach (Tenedora) had not acquired any parcels of land at The Beach; (b) the shares in Tenedora had been sold by Sanctuary PCC to International Resorts Group Plc; and (c) there does not

appear to be any agreement by which LCCL had agreed to fund the development of The Beach.

464. In his oral evidence, Mr Thomson was unable to provide any explanation of how these so-called assets could have had any value. I find that he knew the facts set out in the previous paragraph above, and that the assets in fact had no substantial value that could justify an uplift in the price. I similarly find that Mr Golding, who had a significant role in relation to the land in the Dominican Republic, the arrangements with the Sanctuary investors, and the Lakeview Resort, understood that these "assets" had limited value, or that the facts underlying them pre-existed the original Lakeview SPA. He knew that the inclusion of them in the draft clause 3.4 was an artificial mechanism.

465. I am satisfied that Mr Sedgwick was attempting, on the instructions of Mr Hume-Kendall and Mr Golding, to produce a mechanism which could be activated in the future to increase the price payable to increase the amounts that would be paid under the Lakeview SPA to Mr Golding, Mr Hume-Kendall, Mr Barker and Mr Thomson.

466. On a date between 27 July 2015 and 4 September 2015, LCCL transferred the Lakeview site to an associated company called Waterside Villages Plc, except for some land described as the "development land", which (as already explained) had been charged to LUKI to secure the liabilities of investors in the LUKI bond.

467. On 7 October 2015 there were email discussions between the parties to retrospectively increase the price paid under the Lakeview SPA. This increase would not make use of the proposed new clause 3.4. The initial proposal was for the price simply to be increased to £3.5 million. However, a proposed revised agreement reflecting this increase was not executed.

468. In January 2016 there was further email discussion between Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding, and Mr Sedgwick about increasing the price under the Lakeview SPA.

469. Mr Sedgwick proposed, in an email of 3 January 2016, that the price could be further increased by adding CV Resorts as a subsidiary of LCCL with retrospective effect. He said that this would "enable us to increase the purchase price further". He said that CV Resorts becoming a subsidiary "could have happened at the end of March 2015 before the contract with Paradise Beach was entered into and when the company had no value". He knew of course that it had not in fact been a subsidiary at that date, hence his use of the words "it could have happened". I find that this shows that he knew that what he was suggesting was an artificial mechanism for increasing the price. He had an elastic approach to chronology; he was even prepared, when convenient, to treat something as having happened which had never occurred in fact.

470. I find that Mr Sedgwick also knew that CV Resorts was still worthless. In reaching these conclusions (and the others set out in this section) I draw adverse inferences against Mr Sedgwick from his decision not to give evidence.

471. I am also satisfied that Mr Thomson and Mr Golding knew that Mr Sedgwick had suggested this as another artificial mechanism for increasing the price retrospectively, by bringing in the (supposed) value of CV Resorts. Mr Thomson and Mr Golding both knew that that would have involved falsely pretending the CV Resorts had been a subsidiary

of LCCL on 27 August 2015. That was indeed Mr Sedgwick's suggestion. Mr Thomson indeed accepted in his evidence that this would have been remaking the past.

472. The fact that Mr Sedgwick was prepared to suggest this demonstrates that he was prepared to engage in the concoction of justifications for paying out as much as possible under the SPA. The price had nothing to do with real values. Mr Thomson and Mr Golding understood that Mr Sedgwick was concocting artificial devices to justify payments to the four individuals. I also find that Mr Thomson and Mr Golding knew that CV Resorts had no value in any event (for reasons already given).

473. The email of 3 January 2016 also referred to any increase in the consideration for the sale of LCCL being divided in the "current ratios and not the previous ones". I find that all of Mr Thomson, Mr Golding, Mr Hume-Kendall and Mr Barker knew that the reference to the "new ratios" was to the 45:45:5:5 ratios set out in the Golding-SHK Agreement.

474. A version of the Lakeview SPA with an increased price of £3.5 million, and containing the new clause 3.4, was executed and backdated to 27 July 2015. The agreement also attached stock transfer forms in which a total consideration money of £3.5 million was recorded. These too were falsely backdated to 27 July 2015.

475. I make the following findings about this:

i. The documents (the agreement and the stock transfer forms) were backdated with a view to mislead. There can be no argument that the agreement was backdated to reflect something that had already been agreed in July 2015. What was really agreed at that date was contained in the original executed agreement. The parties knew all of this.

ii. The increase in the price to £3.5 million shows further that the Lakeview SPA was not a genuine, commercial, transaction. As already explained, had that been so, London Trading would simply have insisted on performance of the contract. No commercial party would have agreed a retrospective re-pricing.

iii. There is no evidence that there was any commercial negotiation of the increase in the price for the shares. This is because the dealings were not commercial.

476. I find that Mr Thomson was aware of the proposal to increase the price to £3.5 million. He was kept aware of it by being copied into emails. I have already rejected his repeated general contention in evidence that he did not read most emails addressed to him. I specifically find that he read these particular emails. He was money-driven and the increases meant more for him.

477. In any case, in January 2016, Mr Thomson signed the version increasing the amount to £3.5 million and including the new clause 3.4, and therefore knew its terms. He also knew that the documents (the agreement and the stock transfer forms) had been dishonestly backdated. There was no proper basis for putting in the earlier date.

478. The money paid to the relevant Defendants as sellers of the shares under the Lakeview SPA derived from payments from LCF to a London Group company called L&TD. In the bank statements of L&TD, the payments were recorded as a "share payment".

479. At the dates when the first sums were paid to the relevant Defendants under the loan notes, there was no facility agreement in place between LCF and L&TD. A backdated facility agreement was then put in place and there was purported security, but the value of this was insufficient.

480. As to the production of the backdated facility agreement, the documents show that in January 2016, Alex Lee sent two draft facility agreements to Mr Sedgwick (cc. Mr Thomson). These were an "old" facility to cover existing payments, and a "new" facility for future drawdowns. Mr Lee explained that "[t]he 'old' refers to the facility that has already been drawn down and the other is for the proposed new facility". Some of the amounts already drawn down had already been paid to Mr Hume-Kendall and Mr Golding as "share payments" by L&TD. The facilities were then combined into a single facility for £25 million, recorded in a document provided by Mr Lee to Mr Sedgwick (cc. Mr Thomson) on 4 March 2016.

481. This £25 million facility agreement was signed towards the end of March 2016 but backdated to 27 August 2015. I am satisfied that the document was backdated to give the false impression to auditors that the facilities were already in place before any of the drawdowns had been made.

482. Mr Sedgwick knew of this backdating. He also knew from the drafting process that L&TD had drawn sums from LCF without any facility agreement in place.

483. The backdated L&TD facility referred (as security) to the purchase agreement between CV Resorts and Paradise Beach SA, land in the Dominican Republic owned by Inversiones, and to Tenedora.

484. However, this security had negligible value. As explained above, CV Resorts did not own any land at Paradise Beach and had a worthless right to pay €57 million to acquire a site with a market value of €40 million; the shares in Inversiones were held on trust for El Cupey for the ultimate benefit of the Sanctuary investors by way of security for their deposits; and Tenedora had not acquired The Beach. There was, therefore, nothing valuable to secure L&TD's liability to LCF.

485. Mr Thomson, Mr Golding and Mr Sedgwick knew from their involvement in the Sanctuary scheme and Paradise Beach contract that the security was worthless; and, therefore, that L&TD's borrowings from LCF were effectively unsecured.

486. On 6 January 2016 Mr Sedgwick sent an email to Mr Golding, Mr Hume-Kendall and Mr Barker saying that Mr Hume-Kendall had said it had been agreed that the sale price of £3.5 million in excess of the original price under the Lakeview SPA was to be divided in the new ratios and he wanted the agreement drawn up on this basis.

487. This further shows that the arrangement was artificial and uncommercial. Had it been a genuine sale there would have been no proper basis for dividing the proceeds otherwise than under the original ownership ratios.

488. By July 2016 the payments to the Defendants deriving from the sums paid by LCF to L&TD approached the revised sale price of £3.5 million. Mr Thomson and Mr Golding of course knew of the payments they were respectively receiving. I address their understanding of the amounts the others were receiving below.

489. The fact that the receipts were approaching £3.5 million led to a further retrospective revision of the price. At first, the proposal was to increase it to £4.5 million, but payments were continuing to be made and, in the event, the price was increased to £6 million. A further version of the Lakeview SPA was signed by Mr Thomson, Mr Hume-Kendall and Mrs Hume-Kendall in July 2016 and backdated to 27 July 2015. Mr Thomson clearly knew of the increase as he signed the agreement. I make the same findings about this as I did in relation to the increase to £3.5 million (see [475] above).

490. Mr Thomson's evidence about these increases in price was incoherent. He said that he had no recollection of the discussions regarding the increase in the price. But he also asserted that he was given explanations by Mr Sedgwick and others about the increase in price. I was unable to accept his evidence. I find that he was aware of the increase. He also knew that he was signing a backdated agreement and that the document did not reflect what had been agreed in August 2015.

491. Within two months of the signature (and backdating) of the third version of the Lakeview SPA to increase the purchase price retrospectively to £6 million, the payments to Mr Thomson, Mr Golding and Mrs Hume-Kendall, funded by LCF, exceeded this figure.

492. By January 2017 the total payments from LCF to L&TD under the loan facility exceeded £19.6 million. When the 25% fee paid to Surge was accounted for, the gross sum owed by L&TD to LCF stood at more than £27 million. L&TD had exceeded the then facility limit of £25 million.

493. In order to conceal this, a letter requesting an increase to the facility limit to £30 million was produced in January 2017 and backdated to 20 December 2016. Mr Thomson sent a draft of the letter to Mr Sedgwick. Mr Sedgwick was involved in obtaining a signature on behalf of L&TD on the document. In an email at that time, he made it clear that it was important that the document was backdated.

494. Mr Sedgwick also inserted the security values into the letter. I find that he knew these figures were not supportable. The letter was signed by Mr Hume-Kendall for L&TD. It stated "the current values of the company's portfolio of assets" as Waterside: £17.5 million, El Cupey: £30 million and Magante: £14 million. For the reasons given above these valuations were not ones that could be rationally supported. I find that none of the relevant Defendants (including Mr Thomson) believed the assets to be worth anything like that.

495. At the same time, in January 2017, a second backdated letter was produced (dated 25 October 2016 on its face) seeking LCF's waiver of a breach of the facility agreement by reason of L&TD's failure to produce accounts on time. Mr Sedgwick participated in obtaining the signature on the letter. He knew the letter was misleading because L&TD had not sought the waiver in October 2016.

496. In his oral evidence, Mr Thomson was asked about the backdating of these letters. I find that he knew that the letter seeking the increased facility was backdated to mislead the auditors.

497. In relation to the waiver letter, he said he did not realise that the auditors would be potentially interested by the fact that LCF had been lending to a company in default. He said that he was just trying to rectify the default and that, in his mind, it had nothing to

do with the auditors. That explanation did not, however, account for the backdating. He then claimed that there had in fact been an oral agreement some time before 29 October 2016, waiving the default. I am unable to accept that. If there had been such a waiver, there would have been no reason for LCF to have sent a letter to L&TD on 5 December 2016 notifying it that it was in default (at least without referring to the waiver). Both of the backdated letters were produced so that LCF would be able to deceive its auditors. I find that Mr Sedgwick understood that this was the purpose of the backdated letters.

498. In April 2017 Mr Thomson, Mr Hume-Kendall, Mr Barker, and Mr Golding discussed via email (and probably otherwise too) activating the mechanism in clause 3.4 of the Lakeview SPA to increase the purchase price retrospectively. Mr Sedgwick helped in giving effect to this plan. The initial proposal was that the price should increase to £13.85 million. Mr Sedgwick produced a draft agreement which recorded that the "Megante Asset" would be given a value of £4 million, the "Telos claim" would be given a value of £1 million, and the "Timeshare claim" would be given a value of £2.85 million. Mr Sedgwick told Mr Hume-Kendall, Mr Barker and Mr Golding that a memorandum showing this would be backdated to March 2017. There is nothing in the evidence to suggest that there was any commercial basis for any of these values and I find that they were plucked from the air to justify the proposed price increase. This draft was not executed.

499. I find (despite his protestations that he did not read emails) that Mr Thomson was aware of these discussions. As explained above, he was money-driven, and he was personally interested in any increase in the price.

500. Mr Golding knew about the discussions. He was copied into the emails and was getting a large part of the payments from L&TD (using the old ratios up to £6 million and the new ones thereafter).

501. Despite the absence of any justification for them under the Lakeview SPA (which even on the backdated revised version had a price of £6 million), payments continued to be made by LCF to L&TD, which in turn made payments to Mr Thomson, Mr Barker, Mr Golding, and Mrs Hume-Kendall as sellers under the Lakeview SPA.

502. By 22 May 2017 the total paid out to the sellers under the Lakeview SPA was £14,260,361.10.

503. In emails on 22 May 2017, the parties again discussed activating clause 3.4 to retrospectively increase the purchase price under the Lakeview SPA to £14,260,361.10, the precise amount that had been paid to Mr Thomson, Mr Barker, Mr Golding and Mrs Hume-Kendall under the Lakeview SPA. Mr Sedgwick explained to Mr Thomson that an "agreement has now been reached to increase the consideration to that amount".

504. There is no evidence of any negotiations between the sellers and the buyers concerning the amount of the increase or any valuation of the supposed "assets". I find that that is because the amount of the agreed increase was simply what was needed to justify the sums already paid in relation to the agreement. It was not a genuine attempt to value the "assets" listed under clause 3.4. The parties to the discussions knew that the overall price increase was reverse engineered. Mr Hume-Kendall then proposed the use of rounder numbers. I find that was because the precise numbers would have seemed suspicious.

505. Mr Golding participated in the discussions to increase the price by attaching values to the "assets" under clause 3.4. He was copied into emails. Mr Thomson gave oral evidence that Mr Golding was one of the key decision makers in this regard.

506. Mr Sedgwick explained in an email to Mr Thomson on 13 June 2017 that the proposed variation to increase the price should not be increased because the increased asset values "conflicted with certain other things [Mr Hume-Kendall] was seeking to achieve". I find that this highlighted the obvious reverse engineering of the increased purchase price under the Lakeview SPA. I find that Mr Thomson and Mr Sedgwick understood that the clause 3.4 mechanism was an after-the-event artifice to justify the amounts that had in fact been paid out.

507. A "variation agreement" was executed on 16 August 2017, where the purchase price was recorded as £14.26 million. It was agreed that it was to be paid in the "old ratios" which represented the position as of 27 July 2015 (even though the money in fact paid to Mr Thomson, Mr Barker, Mr Golding, and Mrs Hume-Kendall as nominee for Mr Hume-Kendall, was only paid in the "old ratios" up to £6 million, after which the money was divided according to the "new ratios"). The variation agreement was signed on 16 August 2017. I find that the variation agreement, like the earlier agreements, was not a genuine commercial contract and that the "assets" referred to in it were not genuinely valued. There was no process of valuation. There was no process of negotiation. The values were simply inserted to justify amounts already paid out to the relevant Defendants. I find that Mr Thomson, Mr Golding and Mr Sedgwick knew this.

508. Mr Thomson, Mr Golding and Mr Sedgwick therefore knew that the Lakeview SPA and its variants were not genuine commercial sales. They were concocted to justify the payments made from L&TD's drawings from LCF. They knew that the underlying assets supposedly being sold were worth nowhere near the £14.26 million price paid under the agreement. They knew that the Lakeview SPA was a device used as a cover for channelling money derived from LCF to the four individuals.

509. A further variation agreement dated February 2018 split the £14.26 million consideration differently, to match the payments which were actually made (starting with the "old ratios" up to £6 million and moving to the "new ratios" after that amount was reached).

510. There are two contemporaneous documents which record the amounts paid out to the relevant Defendants. In one spreadsheet, Mr Barker recorded payments totalling £14,260,361.10, together with repayment of a loan of £1 million to Mr Golding. Another spreadsheet, whose author is unclear, allocates the sums paid slightly differently. L&TD bank statements using the designation "share payment" show that some £15,859,307.61 had been paid out. It is likely that these included some payments to Mr Golding deemed to be loan repayments: Mr Barker's spreadsheet includes the repayment of a loan of £1 million made by Mr Golding to LCCL and £300,000 advanced to Mr Thomson by way of a loan. Mr Barker's spreadsheet also includes payments totalling £35,000 which are recorded as a loan from Mr Golding to Mr Thomson (which does not appear in the L&TD bank statements). As already explained, the parties proceeded on the basis that £14,260,361.10 had been paid. I also note that Mr Barker sent his spreadsheet to Mr Sedgwick on 13 April 2019 together with other documents recording payments made to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding in relation to the Elysian SPA, the Prime SPA, the LPE SPA and the LPT SPA.

511. To summarise:

i. The Lakeview SPA (and the various versions and variation agreements) were not genuine commercial transactions. The original agreement was for an uncommercial and unjustified price, since the LCCL shares had no value at that time.

ii. The various later documents were manufactured to justify the extraction of the sums actually paid by L&TD to the relevant Defendants. The price payable under them was repeatedly increased to match the amounts already paid to those individuals and funded by the lending from LCF to L&TD. These increases were reverse engineered and did not represent genuine commercial dealings or valuations.

iii. The various versions of the Lakeview SPA and appended documents were backdated to give a false impression that they had always existed.

iv. The beneficial ownership of the shares in LCCL passed from a small associated group of individuals or their associates to the same small group (albeit the distribution may have been slightly different). In substance, the Lakeview SPA was a mechanism for making payments funded by advances from LCF to the relevant Defendants, without the backing of valuable assets. I find that the Lakeview SPA was a device used as a cover for channelling money derived from LCF to these four individuals.

v. The division of the sale proceeds was different from the ostensible beneficial ownership before the sale. So, for instance, Mr Barker received 5% of the proceeds although he had no interest of the shares in LCCL before the sale; and for the proceeds over £6 million, the new ratios applied.

vi. Mr Thomson approved the payments from LCF to L&TD. I reject the evidence of Mr Thomson that the other directors of LCF were materially involved in approving drawdown requests. I also reject his evidence that he could not have approved drawdowns because he was often away from the office. That evidence was not credible. He gave instructions to his assistants by email or phone. I find that Mr Thomson knew all about the arrangements with L&TD and he authorised the payments.

vii. The early payments from LCF to L&TD were made before any facility was put in place. Once a facility was created (and dishonestly backdated), the security for it was wholly inadequate to support the borrowing.

viii. A substantial part of the sums advanced by LCF to L&TD by the date of the amendment agreement was paid out to the individuals under the Lakeview SPA. Those sums were not obviously being invested in any income-generating activities of that company (or its associated companies in the London Group).

ix. Mr Thomson, Mr Golding and Mr Sedgwick knew all these facts.

512. Mr Thomson clearly knew about the payments he received personally under the Lakeview SPA and its variants. He knew that his share was 5% (as evidenced by the Lakeview SPA and the Golding-SHK Agreement). He also knew (from those

agreements) the size of the shares of the others (Mr Golding: 45%, Mr Hume-Kendall: 45% and Mr Barker: 5%). He knew of the amount payable under the variation agreements (c. £14.26 million) and that he had had about 5% of this. I am satisfied that he knew that the remainder of the £14.26 million was paid out to Mr Golding, Mr Thomson, and Mr Barker in the agreed proportions.

513. Mr Thomson's evidence was that he did not know what the others were getting; he claimed that he had sold his interests under the "buy-out" agreement of July 2015 and as far as he was concerned, he was receiving consideration under that. He said in evidence that he was appalled to learn (through the proceedings) how much the other Defendants (i.e. Mr Hume-Kendall, Mr Barker and Mr Golding) had channelled to themselves rather than using them for commercial purposes. He said that he thought L&TD was using the funds for its commercial purposes and not simply "divvying up" large chunks of it. He repeated that his own receipts were just the price payable under his buyout agreement (so he had no reason to know of the divvying up). He said that he thought the rest was being used to improve the property assets of L&TD.

514. This evidence was both dishonest and revealing. I have already rejected his evidence about the buy-out agreement as a concoction. Once that is put to one side, what is left is that he had a 5% share in the London Group companies; he knew the terms of the Lakeview SPA and the others' shares under it; and it would have been obvious to him that the other shareholders would have been getting their entitlement, just as he was. Moreover, he knew that the £14.26 million figure was reverse engineered, to justify the total payments made out. There was no other commercial justification for it. I find that it was obvious to him that the balance of 95%, after his own receipts, had been paid to the other three. I reject Mr Thomson's evidence that he only learnt during these proceedings that the others were getting their share of the money. He knew it at the time. The reason he was not "appalled" at the time was that he wanted to take out as much money as possible and was recklessly indifferent to the interests of bondholders.

515. Indeed, later in his cross-examination, Mr Thomson altered his evidence and said that he was aware that the other three would have received some of their contractual entitlements but that he did not know the amount. He said that he trusted them to develop the assets in their possession (presumably meaning the businesses within in the London Group). Mr Thomson was a cunning witness and he doubtless recognised that his original hard-line position could not be held. But I also reject the modified position to which he retreated. It was obvious to him that the others were getting their agreed shares.

516. This issue also explains why Mr Thomson was so insistent on maintaining the "buy-out agreement" in the face of the overwhelming contrary evidence. He realised that without some other explanation the obvious inference was that if he was receiving 5% of the money, he knew the others would be getting the other 95%. The only other explanation he offered was the buy-out agreement.

517. Mr Thomson's evidence on this point is revealing because it contains an implicit admission that the channelling of cash to the other individuals from LCF's sources would have been improper. Hence his protestation that he had been "appalled" to learn of how much they had received. I find that he in fact knew just how much the other three were receiving and that (far from being appalled) he permitted the payments; indeed, he caused them by authorising the payments and being party to the documents used to justify them.

He knew that the payments which went to the three individuals and himself were not being used for the commercial purposes of L&TD as a borrower.

518. I find that Mr Golding knew about the division of the payments to the four individuals. He had agreed the new ratios with Mr Hume-Kendall, Mr Barker, and Mr Thomson (see the Golding-SHK Agreement). He was getting his share and knew that the others were getting their shares (he also knew that up to £6 million the "old" ratios applied – as he must have agreed the ratios).

519. I also find that Mr Thomson knew that L&TD had no other source of funding than LCF and that it was not generating any revenues or profits from any commercial activities.

520. Indeed, as explained below, none of the borrowers ever paid any interest liabilities from income they had generated; instead, interest was "paid" by the borrowers increasing their principal obligations to LCF – and the funds used to repay existing bondholders came from new bondholders and not from anything generated by the borrowers.

521. I have already found that at all material times, Mr Golding was able to and did give instructions to Mr Thomson concerning LCF. I find that Mr Golding agreed with Mr Thomson that LCF should continue to provide funds to L&TD which were then distributed under the Lakeview SPA and its variants.

The Elysian SPA

522. This is the second of the SPAs. It was an agreement dated 29 April 2017 between Mr Hume-Kendall, Mr Barker and Mr Golding as Sellers; Elysian Resorts Group Limited ("Elysian RGL") as Buyer; and Global Resort Property Plc ("GRP") and London Group LLP, for the sale and purchase of the ordinary shares in GRP.

523. There were three stages to the transaction:

  i. The first involved re-allocating the so-called "legacy debt", then owed by L&TD to LCF, to several new (and assetless) companies, which were subsidiaries of companies owned by Mr Golding, Mr Hume-Kendall, Mr Thomson and Mr Barker. These were known as the "support companies". London Group LLP owned four of the support companies and London Power Corporation plc owned the fifth, Atlantic Petroleum Support. The purpose of this first step was to move the debt from London Group plc's subsidiary, L&TD, so that London Group plc and its subsidiaries could be sold on a debt-free basis.

  ii. The second was that, under the SPA, the ordinary shares in London Group plc (the name of which was changed to GRP) were sold to Elysian RGL on terms which contemplated or required the issuance of £82 million of redeemable preference shares in GRP, which were to be registered in the name of an entity called London Group LLP.

  iii. The third stage was the entry into new facility agreements between LCF and the subsidiaries of GRP. The sums drawn by the subsidiaries under these facilities were then to be used (at least in part) to fund payments to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding, purportedly in redemption of the £82 million GRP redeemable preference shares.

524. L&TD, the company which had borrowed from LCF, was at that stage owned by London Group Plc, which was the original "London Oil & Gas Limited". This company had been acquired from the Bosshard family in 2015. It was renamed GRP on 8 February 2017.

525. Before the Elysian SPA, the shares in GRP were owned by London Group LLP, a limited liability partnership, whose members were Mr Hume-Kendall and Mr Barker. I find that London Group LLP and its subsidiaries, including GRP, were ultimately beneficially owned by Mr Golding, Mr Hume-Kendall, Mr Thomson, and Mr Barker, in the ratios 45:45:5:5. This was the position set out in the Golding-SHK SPA and these were the ratios in which the proceeds had been divided under the Lakeview SPA (and came to be divided under the Elysian SPA: see below).

526. GRP had three subsidiaries: L&TD, which had borrowed substantial funds from LCF (significant parts of which had been already been paid to Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding and Mrs Hume-Kendall under the Lakeview SPA); London Trading, which owned the shares in LCCL (pursuant to the Lakeview SPA); and International Resorts Group Plc, which held the shares in Inversiones on trust for El Cupey, and the shares in Tenedora.

527. At this stage, L&TD also had three subsidiaries: CV Resorts, CV Hotels and Waterside Villages Plc, which owned the freehold to the Lakeview site.

528. As explained above, the first stage in the Elysian SPA transaction was the reallocation of L&TD's debts to the support companies.

529. In February 2017 there were discussions between Mr Thomson and Mr Sedgwick about reallocating L&TD's debt to other companies, and of selling the shares in GRP to a new company. This is evidenced by emails. There was further discussion about this between Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Sedgwick in March 2017. Mr Lee of Buss Murton was involved on LCF's behalf.

530. In summary, it was proposed that GRP would be restructured so that it had four subsidiaries that would be able to enter into new facility agreements with LCF: CV Resorts Limited (to own the rights under the contract with Paradise Beach SA); Waterside Villages Plc (to own the Lakeview site apart from the development land); Colina Property Holdings Limited (to own the legal title in the shares in Inversiones); and Costa Property Holdings Limited (to own the shares in Tenedora).

531. The other part of the proposed plan was that the existing debt owed by L&TD to LCF would be allocated to five newly incorporated companies, which would take over the liability to LCF. This would allow the debt to be removed from GRP's group, which could then borrow afresh from LCF.

532. Mr Golding was aware of the reallocation of the legacy debt so that GRP would be free of debt. This was, for example, shown by an email from Mr Ingham to Mr Golding among others on 25 April 2017. Mr Sedgwick received the same email and knew of the reallocation of the debt.

533. The five companies that were to assume the legacy debt to LCF were incorporated on 25 and 26 April 2017. Four of them were subsidiaries of London Group LLP and corresponded to the four subsidiaries of GRP: they were Colina Support Limited, Costa

Support Limited, Cape Verde Support Limited, and Waterside Support Limited. The fifth, Atlantic Petroleum Support Limited, was incorporated as a subsidiary of LPC. These five support companies had no assets of their own.

534. Atlantic Petroleum Support Limited was to be allocated £16.4 million of LCF's debt. The remaining four support companies (subsidiaries of London Group LLP) were to be allocated debt in varying sums: Waterside Support Limited: £5 million, Cape Verde Support Limited: £7 million, Colina Support Limited: £5.5 million, and Costa Support Limited: £6.5 million.

535. Mr Thomson was aware of the reallocation of the debt to the support companies. He gave instructions to Mr Lee about it. He knew that this would allow GRP to be sold to Elysian RGL debt-free, so that GRP and its group could then borrow further money from LCF.

536. The support companies entered into facility agreements in the amounts mentioned above, each dated 29 April 2017. Mr Thomson, Mr Hume-Kendall and Mr Sedgwick signed these agreements.

537. The newly incorporated "support" companies granted debentures in favour of LCF dated 29 April 2017. They in fact had no assets of their own and could not therefore provide any valuable security for the assumption of L&TD's debt to LCF. Mr Thomson implicitly accepted this in his evidence: he said that the asset-owning companies (i.e. the subsidiaries of GRP) would provide the support companies with security. This made little sense because (on his evidence) it would have involved the assets of the asset-owning companies being used twice as security (both for their own new borrowing from LCF and for the legacy borrowing).

538. The fifth support company, Atlantic Petroleum Support, granted a debenture to LCF which purported to include a charge over LOG's rights against Atlantic Petroleum p/f under a loan agreement dated 25 May 2016. The debenture stated that the loan had been assigned by LOG to Atlantic Petroleum Support on 28 April 2017. Mr Lee had been told that such an assignment would take place.

539. However, such an assignment (even if made) would not have been anything like proper security for the £16.4 million of debt that Atlantic Petroleum Support had assumed from L&TD.

    i. LOG had by then lent less than £1 million to Atlantic Petroleum p/f.

    ii. Atlantic Petroleum p/f's market capitalisation was only £4.4 million. Mr Lee pointed this out to Mr Thomson in an email in April 2017 and Mr Thomson knew that this was inadequate on its own.

    iii. LOG's rights against Atlantic Petroleum p/f could not be assigned without the consent of third parties being obtained, as the result of subordination arrangements. This had not happened.

540. Mr Lee made repeated requests for a copy of the assignment. In August 2017 Mr Hume-Kendall and Mr Barker purported to execute an assignment of LOG's rights against Atlantic Petroleum p/f to Atlantic Petroleum Support Limited. This purported

assignment, drafted by Mr Sedgwick, was backdated to 28 April 2017. I find that this was done to deceive Mr Lee.

541. However, LOG's board did not authorise the assignment, as Mr Hume-Kendall and Mr Barker (who were directors of LOG) knew. I also find that Mr Sedgwick was never provided with any evidence to demonstrate that there had been proper authorisation of the assignment by LOG.

542. LOG's rights against Atlantic Petroleum continued to be treated by Mr Thomson, Mr Hume-Kendall and Mr Sedgwick as remaining with LOG. For instance, in August 2017, Mr Thomson received an email showing how LOG was treating its interest under the loan to Atlantic Petroleum p/f as its own property. Again, in December 2017, Mr Thomson knew from emails he was sent that LOG continued to regard itself as the counterparty to the loan to Atlantic Petroleum p/f, secured on the same asset. Mr Thomson did not express any surprise or seek additional security. I find that Mr Thomson knew that there had never been a genuine assignment of the debt by LOG to Atlantic Petroleum Support.

543. There is a large volume of emails showing that Mr Sedgwick was aware that, after the date of the supposed assignment, LOG was treating the rights against Atlantic Petroleum p/f as its property. I find that Mr Sedgwick did not believe that LOG had validly assigned those rights to Atlantic Petroleum Support Limited. In relation to this and the other conclusions drawn in relation to Mr Sedgwick's acts and knowledge in this section, I draw an adverse inference from his decision not to give evidence.

544. I find that the purported assignment between LOG and Atlantic Petroleum Support was a sham which was put in place, and falsely backdated, to create the impression that there was at least some security for the debt allocated to Atlantic Petroleum Support Limited, when in reality there was none. This is why there was no consideration of it by the board of LOG at the time. The assignment was ultimately set aside on 7 July 2022 by ICC Judge Barber ([2022] EWHC 1672 (Ch)) on the basis that there had been no authority from the board of LOG.

545. The debentures granted by the other four support companies (the subsidiaries of London Group LLP) refer in turn to a debenture granted in favour of such support company by the corresponding subsidiary of GRP (e.g., a debenture granted by Costa Property Holdings Limited in favour of Costa Support Limited). But these debentures did not secure anything, because they were expressed to be security for the lending made by the relevant support company to the corresponding GRP subsidiary company. No facility was ever entered into between the relevant GRP subsidiary and the corresponding support company, and there was no other basis on which the GRP subsidiary became indebted to the relevant support company. This is the case for each of the GRP subsidiaries.

546. In any event, as already explained these arrangements would have made no commercial sense for LCF as the support companies had no assets of their own and the assets of the GRP subsidiaries would have had to stand as security for both the legacy debt and the new debt. I have already explained why the GRP subsidiaries had nothing like the assets needed for that level of security.

547. I find that Mr Thomson was wholly reckless in relation to the security. He did not insist on an independent valuation of the assets which were supposed to stand as security, or require a proper legal report confirming that proper security was held. He did not take

even the most basic steps any honest and prudent director of a lending company would have taken. He went along with the transaction because he stood to make large sums from it.

548. The liabilities owed by the support companies were also subject to security purportedly given by London Group LLP, the parent entity. This appears to have followed discussions in the course of which Mr Lee (acting for LCF) raised queries about security shortly before the transaction completed. Mr Sedgwick explained to Mr Lee that London Group LLP, the parent entity, would hold GRP's redeemable preference shares, and that the proceeds of those shares would be used to pay the liabilities of the "support companies". He said that London Group would receive preference shares initially in the sum of c. £90 million and would be responsible for repaying the existing debt out of the redemption proceeds of the preference shares. London Group LLP granted a guarantee, and a debenture purporting to secure the redeemable preference shares in GRP.

549. This did not, however, result in valuable security being granted in favour of LCF:

i. It is common ground that the redeemable preference shares in GRP were never issued. Hence the security failed at stage one.

ii. In any case, the Elysian SPA anticipated that the redeemable preference shares in GRP would be issued to Mr Hume-Kendall, Mr Barker and Mr Thomson and not to London Group LLP.

iii. The sums in fact paid to those individuals (and Mr Golding and Mr Ingham) by reference to the Elysian SPA were never used to repay or reduce any of the liabilities of the support companies. The legacy liabilities remained fully payable up to the FCA raid in December 2018 and LCF's collapse.

550. I find that there was no genuine intention to use the sums paid out to the individuals under the Elysian SPA (purportedly in redemption of the preference shares) to pay down the legacy debt owing to LCF. First, if this had been the intention, proper documentation would have been put in place requiring the proceeds under the agreement to be applied in paying the legacy debts. This did not happen. Second, the recipients of the money paid pursuant to the agreement never applied any of it in repaying the legacy debt. The fact that they never made any such payments strongly suggests that they never intended to do so.

551. Mr Thomson also said in oral evidence that the payments in respect of the preference shares under the Elysian SPA would be used to "pay down" the liabilities of the "support companies". I reject this. It is at odds with the way the payments under the SPA were in fact applied and paid. There was no contractual obligation on the recipients to pay down the legacy debts. Neither Mr Thomson, Mr Hume-Kendall, Mr Barker nor Mr Golding ever used any of the money they received to pay down the legacy debts. I find that Mr Thomson knew that there was never any realistic prospect that the liabilities of the "support companies" to LCF would be repaid and that the reallocation of debt to the support companies was a device to clear away the indebtedness incurred during the period of the Lakeview SPAs to permit fresh borrowing from LCF by GRP's subsidiaries.

552. In short, the reallocation of the debts of L&TD to the support companies had no proper commercial rationale. The support companies lacked the assets to provide proper security

and failed to provide valid security. On Mr Thomson's own evidence, even if valid security had been created, the legacy lending and the new lending would both have been secured on the assets of the GRP subsidiaries, which had nothing like the required value even for the new lending, let alone the legacy lending. Indeed, the new lending taken on its own was grossly unsecured. I find that Mr Thomson agreed to the reallocation of the debt and the various security arrangements without any consideration of the interests of LCF or the bondholders. He knew he personally was going to receive 5% of the proceeds of the Elysian SPA and this blinded him to all else. He was recklessly indifferent to the risks the transaction threw onto the bondholders.

553. I find that Mr Golding and Mr Sedgwick were also aware that the support companies lacked the assets to provide security and that they failed to provide proper security.

554. The second stage of the transaction was the sale of the shares in GRP to Elysian RGL. This company was only incorporated on 28 April 2017, the day before the SPA. Elysian RGL was owned by Mr Ingham, and its directors were Mr Ingham and Mr McCarthy.

555. The documents show that there had previously been a plan to use a company called Global Resort Development Limited, which was associated with Mr Terry Mitchell, as the acquisition vehicle. However, it appears that this company was deployed for another purpose, and it was then decided to use Elysian RGL.

556. The day after the Elysian SPA, Mr Mitchell sent an email to Mr Hume-Kendall saying, "Mark used a company he had available to sign. Presumably we acquire from that entity?" I find (partly based on later events explained below) that Mr Hume-Kendall and Mr Golding had intended to enter a transaction involving Mr Mitchell but that they decided they wanted to go ahead quickly and, therefore, Mr Ingham incorporated a new company to function as the purchaser in the interim, pending a subsequent sale to a company connected with Mr Mitchell.

557. As already explained, the Elysian SPA provided for the sale of 100 ordinary shares in GRP to Elysian RGL on terms which envisaged the issue of £82.125 million redeemable preference shares to Mr Thomson, Mr Hume-Kendall and Mr Barker (which were to be beneficially held between Mr Golding, Mr Hume-Kendall, Mr Thomson and Mr Barker in the ratio 45:45:5:5). Although Mr Golding was not referred to in the agreement, I find that it was always understood that Mr Barker was acting as a proxy or nominee for Mr Golding in respect of his 45% interest. Mr Thomson explained in his oral evidence that Mr Golding was to receive consideration under the Elysian transaction.

558. Mr Sedgwick was responsible for drafting the Elysian SPA and he understood its terms.

559. The Claimants accepted that there is comparatively little email correspondence showing Mr Golding's involvement in the development of the Elysian SPA. However, I find that he was involved for the following reasons: he was a major beneficiary of the transaction, set originally to receive 45% of the proceeds; he must have agreed a reduction to 42.5% to accommodate Mr Ingham's share (see below); he plainly knew that the funding would come from LCF (over which he had ultimate control), as there was no other plausible source; Mr Sedgwick had acted as his lawyer for many years and was instrumental in creating the transaction; and Mr Golding sought to avoid his own name appearing in documents. An example of the last point is that at about the same time as the Elysian transaction Mr Golding participated in discussions about changes to be made to the

Lakeview SPA designed to increase his share of the payments deriving from LCF. Mr Golding was not copied into that correspondence, but Mr Thomson explained that Mr Golding would have been involved in the discussions, and I so find.

560. Clause 5.3 of the Elysian SPA provided that 50% of any sums left after general and administrative expenses would be applied in repayment of the redeemable preference shares (i.e. that 50% of such sums would be paid to Mr Thomson, Mr Hume-Kendall and Mr Barker (including for Mr Golding)).

561. No redeemable preference shares in GRP were ever actually issued.

562. Indeed, no preference shares in GRP could lawfully have been issued and redeemed in the circumstances envisaged by the Elysian SPA.

i. A company may not issue shares at a discount (section 580 Companies Act 2006).

ii. For a plc, at least one-quarter of the nominal value of allotted shares must be paid up (section 586(1)).

iii. A plc may only issue redeemable shares if its articles allow it (section 684).

iv. Redeemable shares may not be redeemed unless they are fully paid up (section 686).

v. Redeemable shares issued by a plc may only be redeemed out of distributable profits of the company or the proceeds of a fresh issue of shares made for that purpose (section 687).

vi. Here the shares were never issued. But if they had been they could not have been redeemed without being fully paid up (which never happened); and any redemptions could only have been made using distributable profits (which was not the case, as GRP did not have such profits).

563. Though his evidence on this point was not always consistent, I find that Mr Thomson knew that he personally had never been issued with any preference shares by GRP, and that none had been issued to the other sellers either. Since Mr Thomson knew that the redeemable preference shares had not been issued, he also knew that the debenture granted by London Group LLP (which was supposedly over such shares) did not bite on any assets. Mr Thomson was also unable to explain in evidence why he would have been satisfied with this security given that under the Elysian SPA, the redeemable preference shares were supposed to be held by the individual Sellers rather than London Group LLP. I find that Mr Thomson was recklessly indifferent to these matters. He did not take any of the steps an honest and reasonable director would have taken to ensure that proper security was taken. He and the other relevant Defendants were interested in receiving large payments personally and were entirely reckless about security for the bondholders.

564. The £82,125,000 figure was calculated by adding values for various assets said to belong ultimately to London Group LLP. These included £28.28 million for El Cupey (The Hill), £32.1 million for The Beach, £18.74 million for Lakeview, and £3 million in relation to CV Resorts or Paradise Beach. I find, for reasons already given, that these values were

massively inflated. I also find that each of Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Sedgwick knew that these values were entirely unrealistic.

565. Moreover, it is inconceivable that Mr Ingham, who had been involved with the dealings with the land in the Dominican Republic and had transferred Inversiones and Tenedora for no consideration, would genuinely have been prepared to buy them for a total of £60.3 million. Mr Ingham had previously run Sanctuary and therefore knew that The Hill had been acquired for £780,000; that the shares in Inversiones were held on trust for the Sanctuary investors; that the contract price for The Beach was £3.5 million; and that Tenedora had not actually acquired any of the parcels of land on The Beach yet.

566. Furthermore:

i. There is no evidence of any attempts by Mr Ingham or Mr McCarthy (who supposedly represented Elysian RGL) to negotiate over the price. On the contrary, the price was simply part of the overall package created by Mr Sedgwick at the behest of Mr Hume-Kendall and Mr Golding.

ii. Mr Ingham and Mr McCarthy did not conduct or commission any due diligence into the underlying assets said to comprise the £82.125 million. There is no evidence that they required or procured valuations of the assets. No genuine buyer would have entered an arrangement of this kind without due diligence and valuations.

iii. Mr Ingham and Mr McCarthy did not instruct solicitors to act for them in the purchase. No genuine commercial buyer would have entered such a large contract without instructing lawyers.

iv. Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Sedgwick knew each of these facts.

567. For the above reasons, I find that this was not a genuine arm's length commercial transaction but was an artificial device designed to justify payments to the four individuals and Mr Ingham. I find that each of Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding, and Mr Sedgwick knew this. Mr Ingham was prepared to go along with the transaction because the Defendants agreed that he would receive 5% of all sums to be distributed under it.

568. As to Mr Ingham's role, he had previously run Sanctuary and knew of the Sanctuary scheme. He had also helped Mr Thomson and Mr Hume-Kendall set up SAFE in 2013.

569. Mr Hume-Kendall and Mr Golding agreed that Mr Ingham would receive 5% of the sums paid under the Elysian SPA, by each of them reducing their shares by 2.5%. This is shown in email discussions between Mr Hume-Kendall, Mr Barker and Mr Sedgwick from February 2017 onwards. By March 2017, it was agreed that they would do this by a trust arrangement.

570. Mr Ingham did not actually hold any shares in GRP at the time of the transaction. Mr Sedgwick dealt with this by producing backdated declarations of trust by Mr Hume-Kendall and Mr Barker. It appears from the emails that Mr Sedgwick did this to reduce liabilities for tax, i.e., to deceive HMRC.

571. As to Mr McCarthy's role, he worked at the time of the transaction for London Group Plc, in the same offices as Mr Ingham, Mr Peacock, Mr Redman, Mr Hume-Kendall, Mr Barker, and Mr Sedgwick. This finding is evidenced by a floorplan for offices which show them working together. Mr McCarthy continued to work for London Group LLP and associated companies until August 2018. He was promised a commission in return for his involvement in the Elysian transaction as well as the Prime SPA (see below).

572. The third stage of the Elysian transaction was for LCF to grant new facilities to GRP's subsidiaries. This would enable new drawdowns to be made from LCF, which could then be paid on to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding (as well as Mr Ingham and Mr McCarthy) in the purported redemption of the (non-existent) preference shares.

573. The facility agreements were prepared and executed in May 2017. It was envisaged that each subsidiary would borrow £20 million.

574. The GRP subsidiaries also granted debentures which, on their face, secured the new facilities given by LCF. For reasons already given, I find that the new lending was unsecured or very seriously under secured. In summary:

    i. CV Resorts Limited still did not own any property, and when the Elysian SPA was executed, it was probable that it had no rights at all as CV Resorts was in breach of contract and the vendor had threatened to terminate.

    ii. Costa Property Holdings Limited had not acquired The Beach, and merely held rights under a contested purchase agreement.

    iii. Colina Property Holdings Limited owned shares in Inversiones, but these were held on trust for El Cupey, and Inversiones' liabilities exceeded its assets.

    iv. Waterside Villages Plc did hold property which it could charge by way of security (a freehold interest in the Lakeview site) but there was no rational basis on which any of the participants could have concluded that it had a value close to £20 million.

    v. I find that each of Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding, and Mr Sedgwick were aware of these facts.

575. The subsidiaries of GRP then made drawdowns under the new facilities from May 2017 onwards. At the same time, payments started to be made in purported redemption of GRP preference shares. There was no proper basis for this as no such shares had been issued. These drawn-down sums were paid by LCF to GRP (rather than to the subsidiaries which had entered the new facilities). The liability incurred under each drawdown was then allocated to one of the GRP subsidiaries.

576. The drawdowns from LCF funded payments by GRP to Sands Equity Capital Limited ("Sands Equity"), which was owned by London Group LLP, and of which Mr Hume-Kendall was the sole director. Mr Thomson explained in evidence that its name came from "Spencer and Simon". Mr Thomson knew this to be a company run by Mr Hume-Kendall and Mr Golding.

577. Mr Sedgwick, Mr Hume-Kendall and Mr Barker arranged for a backdated agency agreement to be put in place with Sands Equity to explain why the funds were being paid to Sands Equity.

578. Sands Equity in turn paid these sums to Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding, and Mr Ingham.

579. I find from the contemporaneous documents that Mr Thomson approved the drawdowns by GRP's subsidiaries and that he encouraged the drawing of the maximum amount available in LCF's bank account (essentially being new investments by bondholders). I find that he did this to maximise the payments made under the Elysian SPA. Mr Thomson claimed in evidence that the reason he kept in close communication with Mr Hume-Kendall and Mr Barker about the amounts in LCF's bank account was because he was keen to maximise lending to the borrowing companies (rather than keeping the money in cash). I reject that evidence. He knew that a very substantial proportion of the advances were being paid out to him and the other Defendants for their personal benefit and he did not think that the money was being invested in income-generating businesses.

580. I find that Mr Thomson did not genuinely believe that Elysian RGL was able to generate funds to repay the lending from LCF. In his oral evidence, he suggested that he thought that Mr Ingham (now supposedly in charge of GRP) would continue to develop the various land sites, but he could not begin to explain how sufficient funds would be generated to enable the mounting debts to be repaid.

581. I find that Mr Thomson knew that the others were receiving a substantial part of the advances from LCF to GRP. I find that he knew when he received his payments that this was 5% of the total amount being paid out and that the remaining 95% was going to the others.

582. I have already made findings about this issue in relation to the payments he received under the Lakeview SPA and the same reasoning applies to the amounts he received under the Elysian SPA. I have rejected his evidence that he thought he was in a special position because of the July 2015 "buyout" arrangements and did not realise that the other Defendants would be getting proportionate shares. There was no such buyout arrangement. Instead, there was the 45:45:5:5 division agreed in July 2015 and reflected in the Golding-SHK Agreement (which he had read and retained).

583. Moreover, Mr Thomson knew that the money paid under the Elysian SPA was being channelled through Sands Equity and that this was a company controlled by Mr Hume-Kendall and Mr Golding. This was further reason for him to realise that they too would be receiving their shares under the Elysian SPA.

584. I also find that Mr Thomson was aware of the close correlation in timing between drawdowns being made by the subsidiaries of GRP from LCF and the receipt of sums into his own bank accounts (and I reject his oral evidence to the contrary).

585. Mr Thomson knew that any payments made in relation to the redeemable preference shares that were supposed to be issued under the Elysian SPA would be made with sums lent by LCF to the GRP subsidiaries. Mr Thomson knew that no redeemable preference shares had ever been issued, and he also knew that there was no proper basis on which

payments to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding could be justified under the Elysian SPA.

586. A total of £11.745 million of LCF's assets were paid out to Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Ingham under the auspices of the Elysian SPA, of which Mr Thomson received £522,250 and Mr Golding received £4,406,625.

The Prime SPA

587. The third transaction, the Prime SPA, consisted of three phases.

588. The first Prime SPA was executed on 13 September 2017 and provided for GRP, Elysian RGL and London Group LLP to sell LV Resorts (which owned Costa Property and Colina Property (which in turn owned the companies which held the two Dominican Republic properties)) to a company called Prime Resort Development Limited ("Prime RDL"). The consideration consisted of loan notes of £11.255 million, to be issued by Prime RDL to London Group LLP.

589. The second Prime SPA was executed on 7 November 2017. It provided for Mr Ingham, Mr McCarthy and London Group LLP to sell the shares in Elysian to Prime RDL for £12 million of redeemable preference shares in Prime RDL. £10 million of these redeemable preference shares were to be issued to London Group LLP and the rest to Mr Ingham and Mr McCarthy.

590. The third phase was when the first and second Prime SPAs were combined into an agreement signed on 21 November 2017. This provided for the cancellation of the first and second Prime SPAs and the sale of the shares in Elysian RGL to Prime RDL for (i) £10.3 million of loan notes to be issued by Prime RDL to London Group LLP; and (ii) the issue by Prime RDL of £12 million in preference shares (£9.5 million to London Group LLP and £2.5 million to Mr Ingham and Mr McCarthy).

591. The combined Prime SPA completed on 6 December 2017. The loan notes were issued by Prime RDL on completion, but Prime RDL never issued the preference shares.

592. Prime RDL was owned beneficially by Mr Terry Mitchell. He engaged Mr Angel Rodriguez to be involved in its management. There were three nominee directors: Ms Pippa Isbell, Mr Robert Woodward and Mr Ian Sands. Mr Mitchell agreed with Mr Hume-Kendall that they should be the nominee directors. Mr Sands held the shares of Prime RDL on trust for Mr Mitchell.

593. As already explained, it was anticipated that Mr Mitchell would be involved at the time of the Elysian SPA, but his involvement was postponed because Mr Hume-Kendall and Mr Golding wanted to proceed quickly.

594. From the first formulation of the drafts of the First Prime SPA, it was understood that the payments would be funded by LCF under facility agreements.

595. Emails show that Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Sedgwick were involved in designing this transaction from mid-2017 onwards. On 29 August 2017, for example, Mr Hume-Kendall, Mr Barker and Mr Golding received an email from Mr Sedgwick containing heads of terms for the first Prime SPA. It is to be inferred from this

that these Defendants were involved in designing the first Prime SPA and had knowledge of the proposed terms of the Prime SPA. One of the heads of terms was that the buyer would be under an obligation to raise corporate finance to repay the loan notes and the money would flow through a paying agent for the former shareholders of GRP. It was anticipated that the "corporate finance" would come from LCF.

596. I note that at this stage (29 August 2017) the proposed transaction was being discussed by Mr Sedgwick, Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Mitchell without any apparent involvement of Mr Ingham, despite it being concerned with assets which were supposedly owned by Elysian RGL under the Elysian SPA. This is further evidence of the lack of commercial substance of the various transactions, including the Elysian SPA.

597. The anticipation that the money was to flow from LCF to the various individuals is also shown in an email of 9 September 2017 from Mr Sedgwick to the same Defendants and Mr Ingham. I am satisfied that they always understood that the "corporate finance" would come from LCF (as under the earlier transactions). They therefore knew that the relevant proportion of the advances by LCF would be used to pay Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Ingham, and be justified as consideration for the "assets" transferred by them.

598. The basic concept of LCF being obliged to provide the financing was also shown by an email from Mr Sedgwick to Mr Lee, Mr Hume-Kendall and Mr Thomson dated 11 September 2017. Mr Sedgwick also attached a copy of the draft sale agreement. He said "As always time is in short supply" as they were intending to exchange contracts by the end of the week.

599. Mr Hume-Kendall was insistent that the arrangement should provide for the agreed consideration to be separated from anything going into the buyer's (Prime RDL's) own account. He said this in an email of 9 September 2017. Mr Sedgwick understood the importance of this and explained that clause 5.3 of the draft agreement provided that all corporate finance would be paid to an agent appointed by the Sellers. Mr Sedgwick therefore knew that a large part of the money would go from LCF to the Sellers, via the paying agent.

600. The first Prime SPA was signed on 13 September 2017. As already explained, Prime RDL was to buy the shares in LV Resorts, which held the shares in Costa Property Holdings Limited and Colina Property Holdings Limited, which held the two "assets" in the Dominican Republic. Clause 6.3 of the first Prime SPA required Prime RDL to "fully utilise" facilities available to it from LCF and provided that such borrowings would be paid to a "Security Trustee", i.e. a company appointed by London Group LLP. (It was not actually a security trustee – it was just a payment agent.) The Security Trustee would then use 50% of the sums remaining after payment of costs up to £100,000 per month and interest to repay the loan notes.

601. Following the first Prime SPA, Elysian RGL was left holding the shares in Waterside Village Plc and CV Resorts. The email correspondence shows that a decision was then taken in October 2017 that Elysian RGL itself (holding these remaining assets) would be sold to Prime RDL. On 1 November 2017 Mr Sedgwick circulated an agreement to Messrs Ingham and McCarthy, Mr Hume-Kendall and Mr Barker.

602. The second Prime SPA was signed on 7 November 2017. It provided for the sale of Elysian RGL to Prime RDL in return for £12 million redeemable preference shares in Prime RDL. Clause 6.2 of the second Prime SPA required Prime RDL to redeem at least £1 million of the preference shares per month. Prime RDL was obliged to "fully utilise the financial facilities available to them from London Capital & Finance plc", with such borrowings to be paid "directly to the Security Trustee" (now defined as "a company to be appointed by the Sellers"), which would use 50% of the sums remaining after payment of running costs and interest to redeem the preference shares.

603. On 19 November 2017 Mr Sedgwick suggested combining the first Prime SPA and the second Prime SPA into a single agreement. Mr Sedgwick circulated a draft on 20 November 2017 to Mr Hume-Kendall, Mr Barker, Mr Mitchell, Mr Sands and Mr Seakens (a business associate of Mr Mitchell). The combined Prime SPA agreement was signed the next day on 21 November 2017. It cancelled the first Prime SPA and the second Prime SPA, thereby reversing the earlier transfers.

604. The combined Prime SPA provided for Messrs Ingham and McCarthy and London Group LLP to sell Elysian RGL to Prime RDL for a total consideration of (a) loan notes in the sum of £10.3 million to be issued by Prime RDL to London Group LLP, and (b) redeemable preference shares in Prime RDL in the sum of £12 million, which were to be issued to London Group LLP (£9.5 million) and Messrs Ingham and McCarthy (£2.5 million). Clause 6.4 of the combined Prime SPA obliged Prime RDL to repay £1 million of the loan notes per month and to redeem £1 million of the preference shares per month. Clause 6.5 of the combined Prime SPA obliged Prime RDL to "fully utilise the financial facilities available to them from London Capital & Finance plc" with such borrowings to be paid "directly to the Security Trustee," which would then use 50% of the sums remaining after payment of running costs and interest in order to repay the loan notes and redeem the preference shares. The "Security Trustee" was defined as GAD, a company under the control of Mr Sedgwick.

605. The combined Prime SPA completed on 6 December 2017. On the same date, LV Resorts acquired Costa Support, Colina Support, Cape Verde Support and Waterside Support from London Group LLP.

606. The net effect of the combined Prime SPA was that Prime RDL acquired Waterside Villages Plc, Colina Property Holdings, and Costa Property Holdings and CV Resorts for £22.3 million, which it was going to borrow from LCF. On the same date, Prime RDL acquired four of the support companies. So, the total debt to LCF which transferred to Prime RDL's group was around £38.2 million.

607. There is no evidence that there was any commercial negotiation of the terms of the Prime SPA or significant due diligence being conducted by Mr Mitchell or those behind Prime RDL as the purchasing vehicle. The agreement was drafted by Mr Sedgwick, who acted for the London Group and there is no evidence that Prime RDL instructed its own solicitors to advise on the drafting. Nor is there any evidence of Messrs Ingham and McCarthy (who supposedly controlled Elysian RGL) carrying out any valuations or instructing their own lawyers, which would have been expected had the transaction been a genuine commercial one.

608. In fact, Messrs Ingham and McCarthy were to be paid a fee or commission. This was to be £2 million between them for the first Prime SPA. Mr Sedgwick drafted documents

which provided for this to be paid by giving them an interest in the shares of LV Resorts that would result in them being paid £2 million from the sale proceeds. The fee or commission for Messrs Ingham and McCarthy increased to £2.5 million under the combined Prime SPA. I conclude that these fees or commissions were agreed between Messrs Ingham and McCarthy on the one side and Mr Golding on the other. The emails show that Mr Hume-Kendall did not initially know about these. I conclude that Mr Golding was the principal driver of the deal.

609. There was also an agreement between Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Mitchell that Mr Mitchell would be paid a fee or commission of £1 million for his involvement. The emails show that Mr Mitchell initially envisaged that he would get the same as Messrs Ingham and McCarthy, i.e. £2 million, and Mr Hume-Kendall signed an agreement to this effect. The agreement (dated 12 September 2017) described the fee as payable by London Group LLP to a company Zectrade Limited, which was called "the Introducer".

610. Zectrade was Mr Mitchell's company. Mr Mitchell gave some instructions about the purposes of the fee when a payments company later sought details of the reasons for the payment. The Zectrade fee was later negotiated down to £1 million. This equates to 4.484% of the total consideration of £22.3 million payable under the combined Prime SPA. A contemporaneous spreadsheet which was prepared to calculate the division of the payments under the Prime SPA provides for Terry Mitchell to be paid 4.484% of drawdowns from LCF. I am satisfied, given his economic interest in the transactions and the fact that he had agreed the commissions for Messrs Ingham McCarthy, that Mr Golding agreed the commission arrangements with Mr Mitchell.

611. Zectrade was incorporated in the UAE. Zectrade issued invoices which were initially paid by Sands Equity (controlled by Mr Hume-Kendall and Mr Golding) and later paid by London Power Consultants Limited (a company controlled by Mr Barker). The invoices refer to an "agreement dated 13 September". However, there was no provision in any of the Prime SPAs for Zectrade to be paid £1 million. The reference in the invoices must be a reference to a side agreement. These payments were ultimately made to Zectrade.

612. Given his involvement in all aspects of the transaction I find that Mr Sedgwick knew that Zectrade was Mr Mitchell's company. In relation to this and the other findings set out in this section of the judgment, I draw an adverse inference from Mr Sedgwick's decision not to give evidence at the trial.

613. These payments are a further reason for concluding that the Prime SPA was not a genuine commercial transaction. Zectrade was Mr Mitchell's company. Mr Mitchell was also the 100% beneficial owner of Prime RDL, the purchaser under the Prime SPA. It makes no commercial sense for the buyer to pay a fee of £1 million for Mr Mitchell (as Zectrade) to have introduced himself (as Prime RDL) to the deal. A "management fee" of £200,000 per month was also payable to Prime RDL in return for its participation in the transaction. I conclude that, in reality, Mr Mitchell was paid these fees to take part in an uncommercial arrangement. I find that the purpose of the Prime SPA was to provide a justification to enable the relevant Defendants to receive more money for the "assets" being transferred under the SPA, ultimately funded by borrowings from LCF. As already explained these assets had very limited if any value.

614. There is further evidence that the payments to Messrs Ingham and McCarthy and Zectrade were in the nature of fees for their lending their names (or those of their associates) to the transactions. In a spreadsheet created in November 2018 concerning the £22.3 million of capital gains of the sale "of GRP to Elysian" (divided among Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding, and Mr Ingham), Mr Sedgwick listed the payments of £2.5 million to Messrs Ingham and McCarthy and £1 million to Zectrade as allowable costs. This shows that, in reality, the Prime SPA was understood by the relevant Defendants as a way of making gains in respect of the GRP shares; and that the amounts payable to Messrs Ingham and McCarthy and Zectrade were the merely fees incurred in doing this. I find that Messrs Ingham and McCarthy and Zectrade were assisting Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding in a transaction, the purpose of which was to channel money to them.

615. I am satisfied that Mr Thomson was aware of the terms of the Prime SPAs at the time they were entered into. Mr Thomson therefore knew that under the Prime SPA, the funds paid from LCF would not be paid to Prime RDL, but to a company appointed by the sellers under the Prime SPAs. I also find that Mr Thomson knew that whenever he approved a drawdown, money arrived in his personal bank account. He was, for instance, aware that drawdown requests made by Prime RDL's subsidiaries would give instructions for the funds to be paid to companies such as London Power Consultants; and that he received payments from London Power Consultants shortly after such payments from LCF were approved.

616. Prime RDL made drawdown requests from LCF, which then paid the requested sums to GAD, which was re-registered as a private limited company. Mr Sedgwick controlled it.

617. GAD paid some of this to Sands Equity, which in turn made payments to Mr Thomson, Mr Hume-Kendall, Mr Barker, and Mr Golding.

618. GAD also paid some of the money from LCF straight back to LCF so that LCF could pay interest liabilities to LCF's bondholders. Mr Sedgwick as the controller of GAD was aware about this recycling of new bondholder money to enable interest obligations to be paid to existing bondholders. Mr Thomson knew about it too. He knew about the interest obligations and the recycling of funds through GAD. I address this aspect of the arrangements further below.

619. Mr Thomson said in his witness statement that "[f]rom [Mr Hume-Kendall's] point of view, as I understood it, Prime took over the responsibility from Elysian for paying his deferred consideration under the Elysian sale and purchase." Mr Thomson knew that he and the others were receiving consideration under the Elysian SPA in return for the sale of the underlying "assets" held by the subsidiaries of GRP (see above). He therefore understood that Prime RDL had taken over responsibility for paying the sums purportedly due to him under the Elysian SPA.

620. Mr Thomson was responsible for the drawdowns under the Prime SPA. In his statement, Mr Thomson said that the Prime SPA did not involve any increase in lending. This can only mean that it did not involve an increase in the lending commitment. But, as explained above, there were further drawdowns by Prime RDL after the Prime SPA, and I find that Mr Thomson approved these. I also reject his suggestion in evidence that the other directors were responsible for approving the drawdowns.

621. As under the Elysian SPA, Mr Thomson approved the drawdowns and provided information to Mr Barker and others about the amounts available in LCF's bank accounts. I find that he did this to facilitate the extraction of the maximum sum possible. I again reject the evidence of Mr Thomson that he merely wanted to ensure that LCF's money was being lent to commercial lenders as soon as possible. The real reason he gave this information was that he wanted to maximise the payments to himself and the other relevant Defendants.

622. As to this, Mr Thomson made sure that LCF was keeping Mr Golding informed of the amounts available for drawing from LCF's bank accounts. For instance, on 17 November 2017, Mr Ian Sands (who worked for the London Group) made a drawdown request for £100,000. Mr Golding sent a message to Mr Barker saying that there should be £900,000 in LCF of which £500,000 should be available as a share payment. He referred to Mr Hume-Kendall in the same email. A revised drawdown request came from Mr Sands in the sum of £700,000 payable to GAD. On 20 November 2017 GAD paid that amount to Sands Equity with the reference "Share Purchase". Sands Equity paid £212,000 each to Mr Golding, and Mr Hume-Kendall, and £25,000 each to Mr Thomson, Mr Barker and Mr Ingham. I am satisfied that Mr Golding was aware of how the funds were being used. This also supports the conclusion that Mr Golding had overall control of LCF and its affairs: he was telling other people about the money and procuring the payment out of the maximum possible, including to himself.

623. I also find that Mr Thomson knew that when he received personal payments derived from the drawdown requests, he understood that the other 95% was being received by the recipients (including Mr Hume-Kendall, Mr Barker and Mr Golding). I reject his evidence that he was unaware of this, for the same reasons given above in relation to the Lakeview SPA and the Elysian SPA.

624. In late January 2018 payments under the Prime SPA were paused in what was described as a "payment holiday" in view of limited "headroom". Payments continued to be paid to the relevant Defendants during this period, though not under the Prime SPA (see further below).

625. Eventually, Mr Thomson did request some letters containing values of the underlying assets. Letters were provided by Prime RDL. For instance, on 8 May 2018 a draft letter was provided from Messrs Mitchell and Rodriguez which referred to "directors' valuations". Prime RDL said that Inversiones and Tenedora each had a value of US$50 million, and Waterside had a current value of more than £30 million. This draft was shared with Mr Hume-Kendall. Mr Thomson was also involved in seeing the drafts, as he asked for the draft to include additional land at Magante. This was then included in the draft letter. The final version of the letter (backdated to 8 May 2018) said the additional land at Magante would be worth US$76 million once it had approvals. Waterside was said to be worth £30 million.

626. I find that this correspondence was produced with the involvement of Mr Thomson and Mr Hume-Kendall to seek to justify the recommencement of substantial drawdowns by Prime RDL. This then took place from 15 May 2018 onwards.

627. The renewed drawdowns under the Prime SPA resulted in payments from LCF to London Power Consultants Limited which made payments to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding in the total sum of £1.5 million.

628. The letter from Prime RDL did not enclose any up-to-date valuations (and certainly none addressed to LCF). I find that no honest and reasonable director in the position of Mr Thomson would have become involved in the process of drafting such letters (which were designed to justify drawdowns from LCF) or have accepted the contents of the letter as giving any assurance. In his oral evidence, Mr Thomson was unable to give any explanation for his involvement in the production of this letter. I also find that no honest and reasonable director in the position of Mr Thomson would have relied on the "values" given in the letter to justify further drawdowns. The valuations were fanciful and had no basis in reality.

629. A total of £9.2 million of LCF's assets were paid out to the individual Defendants and others under the Prime SPA, of which Mr Thomson received £413,000 and Mr Golding received £2,840,300.

630. I find that the Prime SPA was not a genuine commercial transaction. It was designed and used by Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding, assisted by Mr Sedgwick, as a means of channelling funds originating from bondholders in LCF to them, purportedly in consideration for the sale of assets which they knew had nothing like the pretended value. I also find that these Defendants knew that the amounts paid out to the four individuals were (by definition) not being invested into an income-generating business with realistic prospects of being able to use their own resources to repay the interest and principal due under loan facilities with LCF as contractually agreed. Instead, they were going into the personal holdings of the individuals themselves.

The LPE SPA

631. The fourth transaction was the LPE SPA. This provided that Mr Hume-Kendall and Mr Barker would sell their shares in Intelligent Technology Investments Ltd ("ITI") and London Artificial Intelligence Ltd ("LAI") to a company called LPE Enterprises Ltd for £20 million.

632. At that time, ITI owned 50% of a company called Asset Mapping Ltd ("Asset Mapping") and 14% of a company called Reserec Ltd ("Reserec").

633. As explained below, by the date on which the LPE SPA was executed, Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding had already received £20 million which was drawn against LOG's facility with LCF, which was then attributed to this agreement.

634. The first matter to address under this head is the facility agreement between LCF and LOG. LOG's first drawdown from LCF took place on 21 March 2016. Initially, the payments were made to London Trading, but the drawing was recorded as a liability owed by LOG.

635. In the period to 17 June 2016 there were drawdowns of about £2.9 million. There was no written facility agreement in place between LCF and LOG. A facility agreement was prepared in the course of April 2016 and was eventually signed on or around 20 June 2016 and backdated to 15 March 2016. Mr Sedgwick was involved in this process. He either backdated the document or knew it was backdated. This is shown by an email of 9 June 2018 to Mr Hume-Kendall and Mr Barker saying that he had printed out the agreement and left it on Mr Hume-Kendall's desk for signature. I find that the document was backdated to create the false impression that the drawdowns only occurred after the

facility agreement was put in place. A debenture was also executed by LOG in favour of LCF on or around 20 June 2016, which provided security over LOG's interests in IOG.

636. I find that Mr Thomson authorised the drawdowns before any facility agreement was in place. I reject his suggestion that other directors were responsible for the drawdowns. He had overall responsibility, and the evidence shows him approving drawdown requests. He also signed the facility agreement and knew that it had been backdated.

637. The terms of the LOG facility (like the other facilities entered into by LCF) provided for LOG's liability to be "grossed-up", so that the borrower also became liable for the 25% sum of each bondholder investment which was paid to Surge. Interest was payable on the grossed-up amount. The commitment period was 3 years. The interest rate was 1.75% plus the interest payable by LCF to its bondholders. Interest was payable quarterly. The facility limit was £20 million.

638. During the second half of 2016 and into 2017 LOG continued to draw down under the facility. LOG lent much of this money on to IOG. The Claimants accept that this was a genuine commercial loan.

639. By 12 October 2017 LOG was over the £20 million facility limit by more than £2.8 million. At this time, there was some discussion of a new facility agreement for LOG with an increased limit of £40 million, but this proved to be difficult due to a debate about the wording of a so-called "G&T clause" by which LOG's obligations to pay interest and repay the principal would be suspended if LCF collapsed. By 6 March 2018 LOG owed £38.4 million to LCF. Mr Thomson continued to approve drawdowns by LOG despite having exceeded the facility.

640. In March 2018, LOG was being audited. BDO was told by 7 March 2018 that there was an agreed facility limit of £50 million. Mr Peacock, who worked in the finance department of the London Group, sent Mr Sedgwick an email on 7 March 2018 saying that he needed a signed LCF-LOG facility document before audit sign off.

641. I find that Mr Thomson was aware that BDO were seeking evidence of agreement to a £50 million limit. He was copied into some email chains referring to the audit and he explained in evidence that he probably had conversations with Mr Hume-Kendall and Mr Peacock about what LOG needed for its audit.

642. In March 2018, Mr Thomson, Mr Hume-Kendall, Mr Sedgwick, Mr Peacock, and Mr Lee of Buss Murton liaised to prepare a letter agreement extending the LOG facility to £50 million. It is clear from the documents that this was only created in March 2018. It was signed by Mr Thomson and Mr Hume-Kendall in March 2018, but backdated to 1 December 2017. I find that this was to mislead BDO into believing that LOG had at all times stayed within the facility limit, and that Mr Thomson, who signed the letter, understood this.

643. Mr Thomson said in his evidence that the letter reflected an earlier oral agreement. At first, he said that such a conversation "could have happened" before this but was unable to explain why the date 1 December 2017 had been chosen for the letter, or why Mr Peacock told BDO on 7 March 2018 that the letter already existed. Later in his evidence, Mr Thomson became firmer and said that there had been an oral agreement in December 2017 to increase the facility to £50 million. This was different from his witness statement,

where he said that in August 2017 LCF increased the limit to £50 million in a side letter. No letter from that time has been disclosed. And there are no documents from December 2017 supporting the suggestion that the limit was orally increased. I concluded that Mr Thomson's evidence on this point was made up because he thought it would help his case. In the end he was not even prepared to accept that the letter agreement (which was created in March 2018 but bore the date 1 December 2017) was a backdated document.

644. I find that he knew that the letter was backdated to mislead the auditors. He had allowed the lending to LOG to go over the facility limit. The December 2017 date was chosen because that was the date when the existing limit had been breached.

645. By this stage, the practice of backdating of documents had become endemic and frequent.

646. As already explained, there was a "payment holiday" under the Prime SPA after 29 January 2018. However, the payments to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding of money deriving from LCF continued. This was paid to them from drawings under LOG's facility.

647. From 2 February 2018 onwards money was transferred from LCF to LOG; from LOG to London Group LLP; and from London Group LLP to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. These transfers all had the payment reference "Pref Share Adv". Mr Thomson was aware of this designation as it was shown in his own accounts.

648. As to this, LPC (LOG's parent company) had issued 25 million redeemable preference shares to London Group LLP (which was beneficially owned by Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding). I am satisfied that the designation "Pref Share Adv" shows that the parties were anticipating treating the payments as relating (in some way) to preference shares in LPC.

649. I am satisfied that Mr Thomson approved the drawdowns from LCF, and encouraged the drawing down of whatever was available in LCF's bank account. Mr Thomson also discussed with Mr Golding the sums available in LCF's accounts. This is evidenced by SMS messages in March 2018 where Mr Thomson was telling him how much was available.

650. I am also satisfied that Mr Golding gave instructions for the payment of the sums by LCF to the four individuals via LOG. For instance, on 16 March 2018, Mr Golding texted Mr Barker saying, "Morning, should be about £1m available today. From Andy." There was then a drawdown request from LOG to LCF for £1.1 million signed by Mr Barker. Mr Golding then sent a further text to Mr Barker saying, "Just had the actual available figs £1.87". LOG then sent a revised drawdown request signed by Mr Barker for £1.8 million. LCF then paid £1.8 million to LOG, which used the money to pay £1.3 million to London Group LLP with the reference "pref share adv". London Group LLP then paid sums out to the individual Defendants, including Mr Golding and Mr Thomson.

651. The sums paid to the relevant Defendants were sometimes paid to a different bank account (such as those of one of their companies) at their election. These payments continued into May 2018.

652. On 29 March 2018 the bank for London Group LLP, Metro Bank, explained in a letter that it was going to cease operating London Group LLP's bank account from 28 May

2018. After this, drawdowns from LCF by LOG were paid to Mr Barker's company, London Power Consultants, which in turn made payments to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding.

653. Mr Thomson then made alternative arrangements for future payments with LCF's own payment processor, GCEN. On 14 May 2018 Mr Thomson called Luke Tofts of GCEN to ask him to set up a new payment facility. In a follow-up email, Mr Thomson told Mr Tofts that the facility was to make payments on behalf of Prime RDL, and that the authorised signatories would be Mr Thomson, and three employees of LCF. None of the other directors of LCF was authorised to use the facility. Mr Thomson's statement to Mr Tofts that the facility was for Prime RDL was untrue. Mr Thomson was unable to explain this in evidence.

654. On 15 June 2018 Luke Tofts informed Mr Thomson that he had set up an email instruction process for payments and that Mr Thomson would be called personally to confirm the payment instructions.

655. On 16 May 2018 Mr Barker sent Mr Thomson the personal bank account details of Mr Hume-Kendall, Mr Barker and Mr Golding. The next day Mr Barker sent him the percentage shares in which payments should be made to them: 42.5% (Mr Golding), 42.5% (Mr Hume-Kendall), 7.5% (Mr Barker) and 7.5% (Mr Thomson).

656. The shares of Mr Thomson and Mr Barker had therefore been increased from 5% each to 7.5% each. As already explained, this is inconsistent with Mr Thomson's claim that there was a buyout agreement in July 2015 giving him a 5% share of disposals. He was unable to explain this in his oral evidence, which was incoherent.

657. After the GCEN payment facility was set up, the "drawdowns" by LOG continued. Mr Barker submitted drawdown requests on behalf of LOG to LCF. Mr Thomson instructed LCF's employees to make payments to LCF's GCEN account, which were treated as a drawdown on LOG's facility with LCF. Mr Thomson then instructed GCEN to distribute the funds to the personal bank accounts of Mr Thomson, Mr Hume-Kendall, Mr Barker, and Mr Golding in the new ratios of 7.5: 42.5: 7.5: 42.5. The first group of payments to these individuals was made on 22 June 2018.

658. By 3 July 2018 the payments drawn from LCF by LOG and paid to Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding via London Group LLP, London Power Consultants and GCEN totalled £20 million. These were treated in the books of LCF as drawdowns by LOG.

659. Mr Thomson informed GCEN that the payments were made on behalf of LPC, one of LCF's borrowers, and that LPC was purchasing a company owned by Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding, which explained the payments to the personal bank accounts. This was untrue: there was no agreement with LPC. I conclude that Mr Thomson knew it was false. Mr Thomson assured Mr Tofts that he would provide supporting documentation when he was back in the office. He could not have done so because no such documents existed. This was another lie. It typifies Mr Thomson's casual approach to truth-telling. GCEN nonetheless continued to process the payments to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding.

660. From his role in directing these payments, Mr Thomson knew of the amounts being received by the other individuals (Mr Hume-Kendall, Mr Barker, and Mr Golding) and the shares of each of them. Indeed the "pref share adv" payments to Mr Hume-Kendall were recorded in a spreadsheet created by Mr Thomson's assistant and I find that this was done at Mr Thomson's direction (despite his denial of it in oral evidence).

661. Mr Thomson accepted that he was aware of the percentages paid to each of Mr Hume-Kendall, Mr Barker and Mr Golding. I find that he knew that there was a direct link between these payments and the drawdowns from LCF by LOG. On one occasion, on receipt of a drawdown request from LOG, he sent a direction to GCEN for payments to be made in the usual ratios even before hearing from Mr Barker. The payments from GCEN were generally made just after the corresponding drawdowns. Mr Thomson also accepted that he knew that the payments from GCEN were paid in agreed ratios.

662. I have already concluded that he was aware of the shares being received by the other three under the Lakeview SPA, the Elysian SPA and the Prime SPA. That conclusion is supported by the fact that there is no evidence that he was remotely surprised about the amounts being received by the other individuals from May 2018 onwards. On the contrary, his lack of reaction shows that this was just a continuation of earlier distributions: each individual was getting his agreed share. The only change was to the agreed ratios. This episode also supports my rejection of Mr Thomson's evidence that he was "appalled" to find out in the course of the trial that large proportions of the advances being made by LCF to the corporate borrowers was in fact being paid to the individual Defendants or their companies. He was not appalled in relation to the payments through GCEN. I find that he was not appalled earlier either. On the contrary, he knew in each case how the money was being divided between them.

663. It is however again significant that Mr Thomson's evidence was that the other three were "cashing out" far too early and that they should have left the money in the business. He said that had he known at the time that they were cashing out, he would have raised questions about it. He then went on to qualify this by saying that it was up to the borrowing companies to use the money as they chose. But his initial answer was telling. He did in fact know about the amounts of the payments to the others – this is shown by his involvement in the GCEN account. He did not stop this happening or ask any questions or say to the others that they were cashing out too early. He knew that those receipts were not being maintained within the business of LOG but were going to the individuals personally. I find that he was indifferent to this issue: he just wanted to get as much as he could from the advances from LCF.

664. As already explained, the drawings under the LOG facility were initially justified as concerned with LPC (whether preference shares in LPC or the acquisition of a company by LPC from Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding, as Mr Thomson told GCEN).

665. I find that a decision was, however, taken to recharacterise the payments retrospectively as having been made for the sale by Mr Hume-Kendall and Mr Barker of certain technology assets (i.e. their interests in Asset Mapping, LAI and Reserec) to a subsidiary of LOG, namely LPE Enterprises. This became the LPE SPA.

666. On 20 June 2018 Mr Sedgwick circulated a draft share purchase agreement under which the sellers of shares in ITI and LAI were Mr Hume-Kendall and Mr Barker. Initially, the

purchaser was to be London Power & Technology Limited (company number 11424900), a newly incorporated company, of which Mr Hume-Kendall was the sole shareholder, and of which Mr Hume-Kendall was a director. The shares to be sold were 90% of the shares in ITI and 80% of those in LAI. The purchase price was £20 million, and the draft agreement stated that £12.9 million of this sum had already been received.

667. On 3 July 2018, the same day on which the sums paid to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding drawn under LOG's facility with LCF reached £20 million, Mr Sedgwick circulated a further draft. The purchaser was now LPE Enterprises, and the amount stated as having been already received was £18.7 million. Mr Sedgwick wrote in a covering email that the agreement was "signed by Elten last week." However, there is nothing in Mr Barker's disclosure to suggest that he had signed it "last week" and the version attached to Mr Sedgwick's email was still an unsigned Word version. Had it been signed, the "last week" would have been that commencing 25 June 2018.

668. On the same day, 3 July 2018, Ms Wiseman of London Group sent a signed copy of the LPE SPA to Mr Thomson. It had a Purchase Price of £20 million. It was between Mr Hume-Kendall and Mr Barker as Sellers and LPE Enterprises as Buyer. The Sale Shares were 90% of ITI and 80% of LAI. As noted above, ITI itself owned 50% of Asset Mapping and 14% of Reserec.

669. The final version of the agreement reverted to stating that the figure of £12.9 million had already been advanced.

670. The executed version was backdated to 21 June 2018. I find that this date was chosen because, by then, the payments to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding via GCEN had not yet taken place: the first of these payments was made on 22 June 2018. At that point, payments of £12.9 million had been made (but not through GCEN). I find that Mr Thomson and Mr Sedgwick knew this. Mr Thomson was responsible for liaising with Mr Tofts and needed to be able to produce a document which would justify the payments from 22 June 2018 onwards. In relation to Mr Sedgwick's knowledge of this fact (and the other findings in this section), as well as relying on the contemporaneous documents, I draw an adverse inference from his failure to give evidence.

671. Mr Thomson sent the backdated agreement to Luke Tofts of GCEN on 17 July 2018. Mr Tofts had a number of further questions, including requests for further details about the companies involved and whether an independent valuation had been carried out. Mr Thomson replied that "the companies are all of a technological nature based around artificial intelligence" and that he had seen independent valuations of the technology companies and referred to the involvement of Ernst & Young and Mazars but refused to provide further detail on the basis that he was under a Non-Disclosure Agreement ("NDA") and was in possession of "market sensitive insider information" which he could not share. These were more lies. There was no NDA. There had been no independent valuations by Ernst & Young or Mazars. Mr Thomson was trying to end the questioning by referring to the presence of an NDA and the risk of providing insider information. Mr Thomson was again making things up to get his way. Mr Thomson floundered when challenged about this in cross-examination.

672. Mr Tofts asked to be provided with whatever information could be shared but Mr Thomson did not provide any further information.

673. The terms of the LPE SPA involved a sale by Mr Hume-Kendall and Mr Barker to LPE Enterprises. That company was owned by TW Private LLP, whose members were Mr Hume-Kendall and Mr Barker. As the share proceeds were shared by the two of them with Mr Golding and Mr Thomson, I conclude that the businesses which were the subject of the sale were beneficially owned by the four individuals in agreed ratios before and after the sale. The LPE SPA was a means for receiving cash consideration (ultimately derived from bondholder investments in LCF) for the assets being sold.

674. There is a document which purports to show a sale of the shares by LPE Enterprises Limited to London Power & Technology (2018) Limited ("LPT") for £1, which bears the date 27 July 2018 on its face. I make no findings about the genuineness of this document, which has not been relied on by the Defendants as justifying the payments.

675. Payment for the assets under the LPE SPA was funded by sums drawn by LOG under its facility with LCF. The Claimants contended that the use of funds in this manner was never properly authorised by the board of LOG. In this regard, there is a board minute dated 14 June 2018, which appears to show approval by LOG's board of bringing the technology companies into the LPC group. However, this document was not the original version of the board minute (which was dated 16 June 2018) but was edited on 27 June 2018 to refer to a price of £20 million. I find that what was decided at the meeting of 14 June 2018 was that the prospect of acquiring the AI business in the future would be investigated, but no decision was made.

676. Further, the cost to LOG of providing these funds was £27 million rather than £20 million, in view of the grossing-up of funds borrowed by LOG from LCF. I find that the acquisition for £20 million was never authorised at a properly informed meeting of LOG. Moreover, LPE Enterprises was owned by TW Private LLP (rather than LOG) from 22 June 2018.

677. In this context, after LCF's collapse, Mr David Elliott (the company secretary of LOG) prepared a note in which he recorded that neither the accounts team nor LOG's in-house solicitor, Ms Marshall, were aware at the time of the payments made pursuant to the LPE SPA.

678. In January 2019 Mr Sedgwick prepared a loan agreement between LOG and LPE Enterprises and a call option agreement which entitled LOG to buy the shares in LPE Enterprises for £1. These documents were signed by Mr Hume-Kendall and Mr Barker and backdated to 21 June 2018. I find that this was done to mislead the board into believing that these documents had been in place at the relevant time.

679. A meeting of LOG's board was scheduled for 12 February 2019 to discuss the "existing undocumented and unapproved loans by LOG". Mr Elliott stated at the meeting that LOG's board had not authorised the use of LOG's sums in this way: "The board could not have ratified the loans as they did not know the money had been borrowed". During the meeting, Mr Hume-Kendall called Mr Sedgwick on a speaker phone. Mr Sedgwick told the meeting that there was a loan facility agreement dated June 2018 and a call option agreement entitling LOG to buy the shares in LPE Enterprises for £1. This prompted Mr Elliott to say that he was resigning as company secretary: "I need a solid base from which to operate, and I feel like I am on shifting sand. I do not agree that those documents were produced by RS back in June and I believe that RS produced the Loan Agreements recently". Mr Hume-Kendall then said, "I think that's unfair about RS, why would he

back date them?". I find that the documents were only created in January 2019 and that Mr Hume-Kendall knew that Mr Elliott's comment about Mr Sedgwick was true and fair. In reaching these findings and others in this section I have considered the documents but have also drawn an adverse inference against Mr Sedgwick from his decision not to give evidence. These documents again show that Mr Sedgwick's backdating of documents was endemic. It was done to try to mislead the board of LOG into believing that the payments drawn down by LOG had always been for its benefit.

680. Returning to the LPE SPA itself, as already explained the price under the LPE SPA was £20 million. This was for 90% of the shares in ITI (which owned 50% of Asset Mapping and 14% of Reserec) and 80% of the shares in LAI. The Claimants contend that this price was fanciful as the assets were not worth anything like this much. I shall address the assets in turn.

681. Asset Mapping was a small company. Its business was the development of technology to map commercial digital assets. It was loss-making. Its accounts for the year ended 30 June 2015 showed a loss of £45,215 for the financial year on a turnover of £25,000 and net assets of £12,605 at the year end. The accounts for the year ended 30 June 2016 showed a loss of £98,880 for the financial year on a turnover of £327,679 and a deficiency of £86,187 at the year end.

682. In a valuation dated 3 February 2017, Mr John Stuckey FCA of Stuckeys Business Advisors, carried out for the directors of the company, assessed the value of Asset Mapping at £450,000 "based on the hope of future sales and the hard work put into the source code to make it a viable product."

683. From March 2017 onwards, Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Ingham were involved in acquiring the shares in Asset Mapping through ITI for a total price of £450,000, less loans from ITI (ultimately funded by LCF) to keep Asset Mapping trading. The net price was £177,000. Mr Sedgwick assisted in the legal aspects of the acquisition, including drafting the SPA. I find that he was aware of the valuation of £450,000, given his involvement in preparing heads of terms for the acquisition.

684. Under a declaration of trust dated 1 June 2017 (witnessed by Mr Sedgwick), the shares in ITI were held by Mr Ingham on trust for Mr Golding (40%), Mr Hume-Kendall (40%), Mr Barker (10%) and himself (10%).

685. ITI acquired the shares in Asset Mapping by a share purchase agreement dated 23 June 2017 but initially only acquired 38% of those shares beneficially, with the remainder held on trust for Asset Mapping's founder, Mr Bill Clee. Mr Golding was involved with the acquisition of Asset Mapping. He knew of the revised heads of terms for the acquisition for £450,000 less the loans already made by ITI. He was aware from emails that the net price was £177,000. He was also aware (from emails) about the completion of the transaction. The SPA for the acquisition was signed at a meeting between Mr Clee and Mr Golding on 19 May 2017.

686. There were later renegotiations and, in the light of Asset Mapping's continuing financial difficulties and ITI's agreement to continue funding of the business, in July 2018 ITI became beneficial owner of 50% of the shares in Asset Mapping. Mr Sedgwick again assisted in the production of the revised agreements with Mr Clee. Mr Golding was aware of them. I find that Mr Sedgwick and Mr Golding knew that Asset Mapping was

struggling financially and required continuing funding by ITI; this was why Mr Clee agreed to release 12% of the shares.

687. Asset Mapping continued to trade at a loss and was only able to continue trading as the result of loans to it from ITI (funded by LCF). A later balance sheet produced for Asset Mapping as at 31 January 2019 showed its deficiency of assets was over £2.1 million. This balance sheet showed loans from ITI of over £2.95 million. When its shares were valued by Mazars (a firm of accountants) as at 28 February 2019, they concluded that the shares in Asset Mapping had an equity value of nil. The assets of Asset Mapping (not the shares in the company) were considered by a proposed administrator to have a value of around £350,000 and they were realised for £175,649 after it went into liquidation.

688. There was a form of valuation of Asset Mapping dated 30 May 2018 produced by Mr Clive Adkins of Kilby Fox. This was prepared on the instructions of the shareholders of ITI. Mr Adkins was instructed to conduct a valuation based on a "business plan", the numbers and forecasts in which had been significantly increased at the request of Mr Hume-Kendall, Mr Barker and Mr Golding (see e.g. email of 6 July 2018); he used a very high multiplier of turnover between 16 and 70 times; and he explained that he was not auditing the figures or expressing an opinion with regard to their accuracy or achievability, and that he was unable to provide a current valuation as he had no details for the revenues for the year ended 31 March 2018. The outcome of the calculation was a value of Asset Mapping of £91.28 million for the year ended 31 March 2019, rising to over £2.15 billion for the year ended 31 March 2023. Mr Golding was involved in procuring the report by Mr Adkins. He participated in the preparation of the "business plan" and requested that the numbers be increased (email of 6 July 2018).

689. The forecast revenue, the basis of which Mr Adkins was instructed to carry out the calculation, showed an enormous rate of growth from the existing revenues, up to £4.6 million for the year ended 31 March 2019 to £107 million for the year ended 31 March 2023. I find that nobody could rationally have placed any reliance on this report, which was essentially an exercise in calculation, based on extremely optimistic projections and assumptions. Mr Adkins expressly disavowed any opinion on the reasonableness of the projections. It was not a valuation in any conventional sense.

690. I find that the shares in Asset Mapping in fact had no significant value at the time of the LPE SPA.

691. Turning to LAI and Reserec, LAI was incorporated on 30 June 2017. The shares in LAI were held by GST on trust for Mr Hume-Kendall and Mr Barker. Mr Sedgwick said in an email to Mr Hume-Kendall and Mr Barker on 1 August 2017 that GST would hold the shares on trust for them and that they would transfer the shares to the appropriate shareholders once they had decided who the shareholders should be. At this date, LAI did not trade and had no assets.

692. LAI invested in the development by Mr Jagadeesh Gorla, a computer programmer, of artificial intelligence software for commodities trading. LAI entered into a consultancy agreement in October 2017 with Mr Gorla and his company, Reserec, under which Reserec would be paid a fee of £11,000 per month for developing the software for LAI. Mr Sedgwick drafted the agreement and knew of its terms.

693. As explained above, there were payments of £20 million to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding between 2 February 2018 and 3 July 2018. Mr Golding and Mr Hume-Kendall each received £8.5 million from LCF via LOG; Mr Barker and Mr Thomson each received £1.5 million.

694. As at the start of this period, February 2018, LAI had paid some of the monthly invoices to Reserec under the consultancy agreement. By the end of the period, the work conducted by Mr Gorla had resulted in a study on the possible applications of artificial intelligence in commodity trading. When trialled, this had resulted in a loss.

695. No professional valuations of the business of LAI were conducted before the start of LOG's administration in 2019. The administrators then instructed valuers, Hilco, who valued LAI at between £5,000 and £20,000 as at 24 April 2019. I find that LAI had no significant value as at the date of the LPE SPA.

696. ITI also separately entered an arrangement with Reserec and Mr Gorla dated 21 March 2018. ITI agreed to acquire up to 20% of the shares in Reserec for £1.5 million, to be paid in a number of tranches over 12 months. The acquisition was to be staged; ITI would acquire a percentage of the shares upon paying each instalment. As at 2 February 2018, ITI did not own any shares in Reserec. As at 3 July 2018, ITI owned 10.7% of Reserec Limited, for which it had paid £721,000. There is no reason to suppose that this shareholding was worth more than the amount paid for it by that date.

697. In summary, the assets transferred under the LPE SPA had a value well short of the £20 million price in that agreement. Asset Mapping and LAI had no significant value. The shareholding in ITI was worth no more than £720,000. I find that the LPE SPA was not a genuine commercial contract. There was no change in the beneficial ownership of the assets purportedly sold under it. There was no professional valuation of the assets. There was no negotiation of the price. The agreement was created after the event and backdated to justify payments that had already been made. A large part of the payments were initially justified by being characterised as payments for preference shares.

698. The LPE SPA was not a genuine arm's length commercial transaction but was an artificial device designed to justify payments of sums deriving from LCF to the four individuals. I also find that Mr Thomson, Mr Golding and Mr Sedgwick were all aware of these facts.

The LPT SPA

699. This sub-heading refers to the LPT SPA for convenience, but this section also covers several other events: the position under the facility with LOG; the payments made before the LPT SPA; and the LPT SPA itself.

700. By the LPT SPA, LPT agreed to purchase the preference shares in LPC from Mr Hume-Kendall and Mr Barker, which they had themselves acquired them from London Group LLP. There were 25 million such preference shares, with a nominal value of £0.01 each. The price was £32,225,096. In the event £16.7 million was paid to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding by LCF under the LPT SPA. These sums were funded by drawings against LOG's facility with LCF.

701. On 23 July 2018 Mr Thomson authorised payments totalling £4.5 million to be made from funds deriving from LCF via GCEN to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. The payments were made on 23 July 2018. The payments were divided (Mr Golding: 42.5%, Mr Hume-Kendall: 42.5%, Mr Thomson: 7.5% and Mr Barker: 7.5%). At the time of these payments, there was no contractual or other justification for them. They were simply sums drawn from LCF and paid to the individuals. No honest and reasonable director in Mr Thomson's position would have allowed this.

702. These payments were subsequently justified by arrangements concerning the sale of the LPC preference shares. The transaction had two steps. The first was that the 25 million preference shares were distributed in specie by London Group LLP to Mr Hume-Kendall and Mr Barker (the two members of London Group LLP). This was approved by Mr Hume-Kendall at a meeting of London Group LLP on 19 July 2018. The second step was for a new company to be incorporated, which would purchase the preference shares in LPC from Mr Hume-Kendall and Mr Barker. On 20 July 2018 LPT was incorporated for this purpose. Mr Hume-Kendall was the sole director and registered shareholder of LPT. On about 27 July 2018 Mr Hume-Kendall signed an LPT board resolution for the purchase by LPT of the preference shares of LPC for a price of £32,225,096 payable in instalments.

703. Also on or about 27 July 2018 Mr Hume-Kendall and Mr Barker signed the LPT SPA as sellers; and Mr Hume-Kendall signed the LPT SPA on behalf of LPT. The LPT SPA provided for LPT to purchase the 25 million redeemable preference shares in LPC, of 1p each, from Mr Hume-Kendall and Mr Barker for a purchase price of £32,225,096.

704. The agreement came after the payments of 4 July 2018 made via GCEN on 23 July 2018, which were ostensibly made under it.

705. Once the LPT SPA was executed, Mr Thomson approved further payments from LCF via GCEN to the personal bank accounts of Mr Thomson, Mr Hume-Kendall, Mr Barker, and Mr Golding. The process was that LOG would submit a drawdown request to LCF signed by Mr Barker and Mr Barker would subsequently email Mr Thomson with details of how the funds should be divided among Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. Mr Thomson would then instruct GCEN to make payments in those amounts. Each payment had the reference "Pref Share Advance".

706. Mr Thomson again provided information to Mr Barker as to the maximum amount available in LCF's bank account to be "drawn" for the purpose of these payments.

707. The payments continued until a final set of payments was made on 26 November 2018, by when £16.7 million had been paid to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding under the auspices of the LPT SPA.

708. The payments under the LPT SPA were funded by drawing on LOG's facility with LCF.

709. LOG was in breach of its facility limit. By 15 June 2018 LOG owed £76.7 million to LCF. LOG's facility limit was £50 million (under the backdated letter agreement dated 1 December 2017 described earlier).

710. By September 2018 LOG owed LCF £104.9 million against a facility limit of £50 million.

711. Mr Thomson authorised payments from LCF to LOG that he knew were paid to Mr Golding, Mr Hume-Kendall, Mr Barker and Mr Thomson in the ratios 42.5: 42.5: 7.5: 7.5, notwithstanding that LOG had exceeded its credit limit. I find that these ratios reflect the beneficial ownership of London Group LLP at this stage.

712. Mr Thomson knew the terms of the LPT SPA. Mr Sedgwick sent the document to Mr Thomson, Mr Hume-Kendall and Mr Barker on 6 August 2018. He personally received 7.5% of the payments made under it, amounting to over £1.2 million.

713. I also infer that Mr Golding knew about it. He received 42.5% of the proceeds of the agreement, amounting to more than £7 million. Mr Sedgwick had been Mr Golding's solicitor for many years and had drafted the agreement. Mr Barker, who functioned as Mr Golding's proxy, knew of its terms and signed it. Mr Hume-Kendall, Mr Golding's close business associate knew of it. He signed it. I am also satisfied that Mr Golding knew that LCF was the ultimate source of the payments.

714. Mr Thomson said in his oral evidence that his entitlement to the payments under the LPT SPA arose under the July 2015 buy-out agreement. I find that this evidence was dishonest. I have already explained that there were no such agreements. Mr Thomson was also unable to explain why he was getting 7.5% of the proceeds, since the alleged buy-out agreement was 5%. I also find that Mr Thomson knew that the remaining 92.5% was going to the other three individuals (or their companies) under the LPT SPA. Again, he showed no surprise. He was certainly not "appalled" (see the earlier discussion of this point). That is because he understood that the consideration under the LPT SPA, as with the earlier transactions, was being paid to them in agreed ratios. He therefore knew that the £16.7 million paid under the LPT SPA (funded by LCF's lending to LOG) was not being ploughed into any revenue-generating business of LOG, but was being "cashed out" (to use his expression).

715. As explained above, the lending to LOG was well above the facility limit. A new facility agreement was discussed and prepared in the course of September and October 2018, to increase the facility limit to £120 million. Mr Thomson participated in the negotiations, assisted by Mr Lee. There were various drafts of the agreement, dated September 2018 in typescript. The revised agreement was signed by Mr Thomson, Mr Hume-Kendall, and Mr Barker between 15 October 2018 and 2 November 2018 but backdated to 4 December 2017 in order to make it seem that LOG had never exceeded the facility limit. I find that the backdating was carried out deliberately to mislead BDO, LOG's auditors. Mr Thomson wrote a letter to BDO dated 19 November 2018 which stated that as of 30 September 2018 the facility limit was £120 million. That was false, as he knew. The facility was not signed by that date.

716. In his witness statement Mr Thomson stated that the second facility agreement was a more robust document which was designed to replace the side letter and that nobody was misled. He said that it was dated with the same date as the side letter. He was wrong about the date. The side letter for £50 million (itself backdated) bore the date 1 December 2017. The backdated facility agreement, prepared and executed in October or November 2018, was dated 4 December 2017. Moreover, the facility was not just a more robust replacement of the side letter: it changed the terms of the lending and included an increase in the facility limit from £50 million to £120 million.

717. Mr Thomson accepted in his oral evidence that the commitment limit of £120 million had not in fact been agreed in December 2017. He also accepted that he must have signed the second LOG facility between 15 October 2018 and 2 November 2018, and that it was in different terms to the side letter with a limit of £50 million. Mr Thomson refused under cross-examination to accept that the second LOG facility was not a truthful document because it had been backdated to 4 December 2017. He said LOG's borrowing requirements "had evolved" and "considerably moved on", that the facility was merely "a working document", and that the new facility was "not a new limit". I reject this. Mr Thomson could not explain why, if things had moved on, the new agreement was not dated October or November 2018. Nor could he explain why, if there had been an agreement on 1 December 2017 to increase the facility limit to £50 million, this was followed almost immediately by an agreement on 4 December 2017 to increase the limit to £120 million. I find that Mr Thomson knew that the documents were untruthful and designed to mislead BDO. His evidence was dishonest.

718. It appears that the other board members of LOG were only shown drafts, which showed the date September 2018 in typescript. There was indeed a signed copy dated 18 October 2018 signed by Mr Hume-Kendall and Mr Thomson. This had a commitment of £150 million. It appears from a minute of a meeting of the board of LOG held on 12 February 2019 that this was in the records of LOG and that the board believed this to be the relevant facility agreement. Mr Hume-Kendall did not correct the board about this, including at the meeting on 12 February 2019 when the board was considering the historical sequence of agreements.

719. The LPT SPA did not change the beneficial ownership of the preference shares in LPC. After they had been distributed in specie by London Group LLP to Mr Hume-Kendall and Mr Barker, the shares were sold by Mr Hume-Kendall and Mr Barker to LPT. The shares in LPT were registered in the name of Mr Hume-Kendall. But by a trust deed executed on 30 November 2018, Mr Hume-Kendall declared that he held the shares in LPT on trust for London Group LLP, whose members were Mr Hume-Kendall and Mr Barker. I am satisfied that London Group LLP itself was owned beneficially by Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Thomson: this is shown by the fact that the proceeds under the various SPAs were distributed to those individuals.

720. The LPT SPA was in essence therefore a way of extracting a cash consideration of £32 million for shares which stayed with the same group of beneficial owners. Had the intention been for the shares to be placed in a new corporate vehicle, that could have been done without the sale element. And if there was a genuine expectation that the shares would be redeemed, the proceeds would have been paid for the redemption.

721. Under the terms of the LPT SPA, the price was £32,225,096. The LPT SPA explained (at clause 3.1) that the price, which was based on a draft balance sheet for LPC as of 31 May 2018, was subject to variation in the event that there was a change in its audited accounts, and was intended to be based on 30% of the net asset value of LPC.

722. The price was calculated as follows:

    i. Under the addendum to LPC's articles, LPC was entitled to redeem the preference shares.

ii. The sum payable by LPC on the redemption of each preference share would be "a sum equivalent to 0.0000012% of the Net Asset Value of [LPC]". Since there were 25 million preference shares in existence, the total amount payable by LPC on redemption would be a sum equivalent to 30% of the Net Asset Value of LPC.

iii. "Net Asset Value" was defined in the addendum to LCF's articles to mean "the net asset value of [LPC] as assessed by the auditors of [LPC] from time to time acting as experts on the assumption that [LPC] is being sold as a going concern by a willing seller to a willing buyer".

iv. An estimated balance sheet drawn up for LOG as at 31 July 2018 stated that LOG had net assets of £107,416,985.

v. As LPC owned LOG, LPC could be treated as having net assets of £107,416,985.

vi. If LPC decided to redeem the preference shares, then the auditors "acting as experts on the assumption that [LPC] is being sold as a going concern by a willing seller to a willing buyer" would conclude that LPC had net assets of £107,416,985.

vii. Therefore, on the redemption of the LPC preference shares, LPC would pay £32,225,095.50 to the holders of the LPC preference shares.

viii. So, the LPC preference shares were worth £32,225,096 and LPT could properly agree to buy them from Mr Hume-Kendall and Mr Barker at that price.

723. I am satisfied that there were several basic and self-evident flaws in this approach to the calculation of the value of the shares:

i. LPC's auditors had not concluded "acting as experts on the assumption that [LPC] is being sold as a going concern by a willing seller to a willing buyer" that LPC had a net asset value of £107,416,985. There was also no realistic prospect of them doing so.

ii. LOG did not have net assets of £107,416,985. LOG's most valuable asset was its investment in IOG. This consisted of a combination of loans, warrants, and convertible debt instruments which would have given LOG the right to convert the debt into shares in IOG. IOG was an AIM listed oil exploration and production company focused on extracting oil and gas from legacy assets sold off by their former owners in the UK waters off the North Sea. It held certain licences. By the dates of the administrations of LCF and LOG, it had yet to assemble the finance and operating capabilities to exploit its licences and other assets. The Claimants' expert, Mr Osborne, gave evidence, which was not challenged at the trial, about the proper way of valuing LOG's interests in IOG. They were a combination of loans and embedded options to acquire equity in IOG. The loan element was to be valued taking into account interest rates and maturity date. The options were to be valued by using the Black-Scholes model (which takes account of the strike price, the current price of the underlying asset, the time to expiry of the option, the risk-free rate of funding, and the expected volatility of the asset); and applying appropriate discounts to reflect the characteristics of IOG as a small AIM listed company, whose loans were not readily marketable and whose shares were relatively illiquid. Applying this approach, Mr Osborne concluded that LOG's investment in IOG was

worth between £26.4 million and £53.6 million on 27 July 2018. I accept that evidence and hold that the maximum value of LOG's interest in IOG at that date was £53.6 million.

iii. LOG had also made an investment in Atlantic Petroleum p/f. As at 27 July 2018, LOG had loaned a principal sum of £1.88 million to Atlantic Petroleum p/f, with accrued interest of £324,625. So, this was not a significant asset.

iv. The draft balance sheet prepared for the LPT SPA, which gave a value of £162,446,721, was the result of averaging two valuation methodologies. The first valuation methodology used was a Black-Scholes calculation. The estimated balance sheet increased the volatility metric to 100%, which is higher than that used by Mr Osborne. The resulting figure was a valuation of just under £71.2 million. The second methodology was based on an estimate of the net present value of IOG's underlying assets. The calculation involved adopting a risk factor of zero. The net present value of IOG's assets (not shares) was then said to be £390.1 million. It was then said that the value of LOG's rights was £243.5 million, on the basis that LOG could exercise an option to acquire 62% of the shares in IOG. The figure used in the estimated balance sheet then adopted an average of these two exercises, resulting in a value of £157.536 million. A figure of over £5 million was added in respect of LOG's loan to Atlantic Petroleum, resulting in the total of £162,446,721.

v. I find that this exercise made no sense at all. The expert evidence shows that Black-Scholes was the established method for calculating the value of the options embedded in the IOG instruments. The NPV approach involved an assumption about the eventual value of IOG's underlying assets and applying a risk-free rate, which on its face could not conceivably have been supportable. It was obviously irrational. In any case, having conducted a Black-Scholes valuation, there can be no proper basis for then using the average of that valuation and the value arrived at under another method. Moreover, no discounts were applied for the illiquidity of the underlying securities. I find that that the calculation was undertaken with a view to creating an overinflated value for the asset value of LOG and that the approach was irrational. It created an unreal value.

vi. On the other hand, LOG had substantial indebtedness to LCF, which amounted to £88.9 million as at 27 July 2018. The estimated balance sheet incorrectly stated the value of LOG's debt to LCF at only £47.5 million. This appears to be because it was based on 31 March 2018 and was not updated to July 2018.

724. I therefore find that LOG's liabilities actually significantly exceeded its assets as of 31 July 2018. The value of LPC's shares in LOG was therefore nil. I also find that at the time that the LPT SPA was prepared and executed, this would have been known to Mr Hume-Kendall, Mr Barker and Mr Golding.

725. Some of the Defendants relied at the trial on an "offer" addressed to Mr Golding to acquire the preference shares in LPC in the sum of £70 million in October 2017. The offer was set out in a letter dated 25 September 2017 from a company called Blueprint Capital. The person responsible for the offer was Mr Clint Redman who, at the time, worked for London Group LLP and was involved in plans by Mr Thomson, Mr Hume-Kendall and Mr Golding (among others) to issue an "oil bond". Mr Redman had also had

many other dealings with Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding over the years. The proposal in the "offer" letter was a mechanism for paying the proceeds of a proposed "oil bond" to Mr Golding. On the same date as this "offer", an invoice was issued by Blueprint Limited to London Group LLP in the sum £250,000, which was payable to Mr Redman's bank account. The invoice purported to be in relation to the Paradise Beach project, which by that time had terminated. There was no evidence explaining what this invoice was in respect of.

726. On its face, the Blueprint Limited "offer" appears to have been a mechanism to pay £70 million of the proceeds of the proposed oil bond to Mr Golding. I heard no evidence from any witness explaining the circumstances of this offer. No weight at all can be placed on it.

727. For the detailed reasons set out above, I find that (to the knowledge of Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Sedgwick) the LPT SPA was not a genuine arm's length commercial transaction but was an artificial device designed to justify payments from funds deriving from LCF to the four individuals. The sale left the beneficial owners the same; its purpose was to enable the extraction of cash consideration by the four individuals. At the time of the transaction the LPC preference shares had no value and the calculation underlying the price was irrational and obviously inflated.

728. The sums paid under the LPT SPA all derived from loans from LCF to LOG.

729. Mr Thomson said repeatedly in his oral evidence that he accepted the assurances of LOG's board that LOG had provided adequate security for the borrowing from LCF. However, he did not explain any steps he had taken to confirm that LOG's security was adequate. He did not require the provision of independent valuations of the only assets owned by LOG, namely its interests in IOG and Atlantic Petroleum. He knew that large amounts of the drawdowns by LOG were applied in making payments to himself and the other three individuals, such that these sums were not being maintained and employed by LOG in income-generating activities. He did not require the provision of business plans or other documents from LOG to explain how LOG was going to be able to meet its obligations to pay interest and principal to LCF. He also knew that LOG (like the other borrowers) had agreed to add the 25% payable from gross receipts by LCF to Surge to the drawdowns.

Emails in July and November 2018

730. In his closing submissions, Mr Sedgwick relied on an email he sent to Mr Lee, Mr Thomson and Mr Barker on 19 July 2018. In the email Mr Sedgwick said that Mr Hume-Kendall and Mr Thomson had discussed the repayment of the amounts outstanding from CV Resorts and Atlantic Support. The proposal made by Mr Hume-Kendall was that London Group LLP would make available (for payment of the two liabilities) the sum of £1 million per month out of the redemption of the redeemable preference shares in LPC and that payments to LCF would commence shortly. In addition, any sums received from Cape Verde or Atlantic Petroleum would be paid as they were received. Mr Sedgwick also referred to a draft term sheet relating to the payments from CV Resorts and Atlantic Support to LCF. Mr Sedgwick submitted that these documents demonstrated an intention to repay the amounts borrowed from LCF and that this undermined the Claimants' arguments that LCF was trading fraudulently or was a Ponzi scheme.

731. Mr Sedgwick introduced these documents in closing. He did not give evidence and therefore the significance and context of the documents could not be explored with him in court. In response, the Claimants pointed out that the email of 19 July 2018 was sent three days after the commencement of the audit process for the April 2017 accounts. The Claimants said that the proposal was produced as evidence to satisfy the auditors of the recoverability of the loans to CV Resorts and Atlantic Support. The Claimants said that nothing in fact then happened; no documents were put in place; and no such payments were ever made from the proceeds of the redemption of the LPC shares. I draw an adverse inference from Mr Sedgwick's decision not to give evidence. I conclude that I am unable to place any weight on the email of 19 July 2018 or the draft term sheet. I find from the fact that no such payments were ever in fact made that there was no serious intention to put these arrangements in place.

732. Mr Sedgwick also referred in closing to an email exchange with Mr Lee on 21 November 2018. This concerned the term sheet for the loans from CV Resorts and Atlantic Support. Mr Lee said that this had to do with the sums received from the sale to Prime RDL but said that it would require the actual recipient to sign the agreement as CV Resorts was not the recipient under the Prime SPA. He asked Mr Sedgwick to give it some thought. Mr Sedgwick gave an inconclusive reply. It does not appear that anything more happened. Again, Mr Sedgwick declined to give evidence about this. I am unable to give the exchange any real weight.

Other payments to the First to Fourth and Eighth Defendants originating from LCF

733. Earlier parts of this section have addressed the payments made to the relevant Defendants under the impugned SPAs.

734. These Defendants also received other amounts ultimately deriving from LCF.

735. I start with Mr Golding. On some occasions, LCF paid sums to Mr Golding directly. For example, on 27 April 2016, Mr Barker provided Katie Maddock of LCF with an invoice from Mr Golding headed "SG Golding Consulting" in the sum of £32,700 for "professional services". On 29 April 2016 LCF paid £32,700 to Mr Golding with the reference "SG CONSULTANT". LCF's accountants queried this payment. Mr Thomson told them that it was for "financial services consultancy relating to all bonds".

736. LCF made a further payment to Mr Golding in the sum of £10,000 with the reference "SG CONSULTANT" on 25 July 2016.

737. On both of those occasions, LCF made matching payments to Mr Thomson. They both received the same amounts on the same days. There was no agreement under which Mr Golding or Mr Thomson were entitled to such fees.

738. On another occasion, Mr Thomson, Mr Barker and Mr Golding were paid £30,000 each via London Capital Marketing Limited ("LCM"). I find that this company was controlled by Mr Thomson, who was the sole director and shareholder. On 7 April 2017 LCF paid £90,000 to LCM. Mr Thomson emailed Mr Barker to say that invoices should be addressed to LCM. Mr Barker then emailed Mr Thomson attaching two invoices for "fundraising consultancy" and "professional services". LCM then paid £30,000 to Mr Thomson, £30,000 to Mr Barker and £30,000 to Mr Golding.

739. On other occasions, Mr Golding received payments of money originating from LCF via LOG. On 12 June 2017, for instance, LCF paid £601,750 to LOG, and on 13 June 2017 LOG paid £200,000 to Mr Golding and £25,000 to Mr Barker (each with the reference LOG SHARE PAYMENTS). There does not seem to have been any attempt to explain or justify these payments, even by the use of misleading invoices.

740. LOG also made substantial monthly payments to Mr Golding, often accompanied by payments to Mr Hume-Kendall's company, LV Management, and Mr Barker's company, Wealden Consultants Limited ("Wealden Consultants") (later known as London Power Consultants). For example:

    i. On 1 June 2017 LOG paid £20,000 to Mr Golding, £20,000 to LV Management and £15,900 to Wealden Consultants.

    ii. On 29 June 2017 LOG paid £20,000 to Mr Golding, £20,000 to LV Management and £15,900 to Wealden Consultants.

    iii. On 31 July 2017 LOG paid £20,000 to Mr Golding, £20,000 to LV Management and £15,900 to Wealden Consultants.

741. Mr Golding also received payments of money from LCF via London Group LLP. As already explained, LCF routinely paid money to Sands Equity. During that period, Sands Equity made substantial payments to London Group LLP, which in turn paid some of the sums to Mr Golding. London Group LLP often made payments to Mr Hume-Kendall and Mr Barker at the same time. For example:

    i. On 1 December 2017 Sands Equity paid £70,000 to London Group LLP, which paid £24,000 to Mr Golding, £24,000 to LV Management, and £15,900 to Wealden Consultants.

    ii. On 3 January 2018 London Group LLP paid £24,000 to Mr Golding, £24,000 to LV Management and £15,900 to Wealden Consultants.

    iii. Such payments were often repeated by London Group LLP at the beginning of every month.

742. None of the payments by LCF which found their way to Mr Golding in these ways were justified. I find that Mr Thomson authorised the various payments from LCF to Mr Golding (where they were direct) or the intermediate recipient (where indirect). I have already found that Mr Golding had influence or control over LCF, and I find that Mr Golding authorised or directed the making of these payments.

743. Mr Golding also received substantial payments from Surge of funds ultimately originating from LCF. Mr Thomson was aware of these payments. This is explained at paragraphs [1109] to [1120], and [1323] to [1350] below.

744. Turning to Mr Thomson, as just explained, he received payments from LCF and LCM to match those paid to Mr Golding.

745. Mr Thomson was also paid £10,000 on 4 September 2015, £10,000 on 19 November 2015, £9,733.19 on 4 February 2016, £20,000 on 1 March 2016, £20,000 on 4 April 2016, £52,700 on 29 April 2016, £20,000 on 1 June 2016 and £20,000 on 1 July 2016. Mr

Thomson told LCF's accountants, Oliver Clive, that these sums had been paid to a marketing company called Media GPS Limited ("Media GPS"), which he said had provided marketing and PR services. Mr Thomson provided invoices in the name of Media GPS to support this assertion:

> "As discussed please find attached the invoices from Media GPS that cover the marketing and PR work for our bonds. The work this company has done to date cover all our bonds and we will be using them for the same work on our next series of bonds".

746. This was dishonest. I find that Media GPS was Mr Thomson's own company (though he said in his witness statement that it was his father's). Unfortunately for Mr Thomson, Mr Davidson of Oliver Clive & Co spotted this. He replied, tactfully, "Sorry canyt [sic] use these as you have submitted dormat [sic] accounts for media gps. Must have been a mistake". The payments were instead classified by Oliver Clive as drawings on Mr Thomson's director's loan account and repaid by him to LCF using money from L&TD (which in turn had received sums originating from LCF). The episode shows Mr Thomson's propensity to take sums from LCF without any proper basis, and then lie about the purpose of the payments.

747. In his oral evidence, Mr Thomson said that these payments were monthly drawings that were booked as a director's loan. Mr Thomson said that he created Media GPS with his father and did not deny that he controlled Media GPS (though in his witness statement he said it was his father's company). Moreover, it was his own evidence that it was he who reversed the payments, which shows that he must have controlled Media GPS.

748. Mr Thomson went on to suggest that these payments, which totalled £162,433.19, had been paid for his father to do "proof-reading and other work for the company". This was incredible. LCF's materials were professionally produced and were reviewed by a number of people. If he was involved at all, Mr Thomson's father could not conceivably have done that much proof-reading. Moreover, Mr Thomson could not explain in oral evidence why he had reversed the payments if they had genuinely been made for services rendered: he just said that he reversed it "for whatever reason". I conclude that this evidence about this episode was dishonest.

749. When asked about this episode Mr Thomson also said, tellingly, that LCF was his company and that if he wanted to take out money, he could have done so very easily by making payments to Media GPS.

750. LCF made further payments to Media GPS, which in turn made payments to Mr Thomson:

    i. On 25 November 2016 LCF paid £100,000 to Media GPS. A few days later, on 29 November 2016 and 30 November 2016, Media GPS paid a total of £100,000 to Mr Thomson.

    ii. On 11 December 2017 LCF paid £175,000 to Media GPS, which paid £172,000 to Mr Thomson on the same day.

751. Mr Thomson said in his witness statement that some of these payments constituted his Christmas bonus from LCF. (He also said, inconsistently, that Media GPS was his

father's company – I have already rejected this evidence). He said in his statement that the level of his Christmas bonus was delegated by him not to one of the other members of LCF's board but to Ms Maddock, who was not a director. He said that Ms Maddock apparently decided that Mr Thomson should be paid £100,000 in 2016 and £175,000 in 2017. He said that he had been happy with his remuneration but that she had pressed him to take a bonus and he then said to her "if you want to pay me a bonus that is up to you" and left it to her. I cannot accept this evidence. There is no credible reason why Ms Maddock (an employee) would have delegated power to do this, rather than the board; or why Mr Thomson would just have accepted whatever she said. He was the CEO and could decide.

752. Moreover, Mr Thomson admitted in evidence that, rather than being shown as remuneration, these bonuses were recorded in LCF's accounts as an expense of LCF. That undermines his evidence that everyone knew that the payments were a bonus; it is clear that the company's accountants did not.

753. Whatever the mechanism by which these payments were decided and made, there was no proper justification for them, and they were not authorised by LCF's board. They simply represented an unauthorised extraction of money by Mr Thomson.

754. Mr Thomson also received large sums (through Media GPS) from Surge, paid with funds ultimately deriving from LCF (see [1109] to [1113] below).

755. None of these payments was justified. Mr Thomson was taking money from LCF, at the expense of LCF's bondholders.

756. Mr Golding also received very substantial personal loans from LCF, which were later waived when the liability was assumed by a company controlled by Mr Golding.

757. LCF began making advances to Mr Golding on 27 November 2015. They were paid into a bank account operated and controlled by Mr Golding called Home Farm Equestrian Centre. This was a trading name of a business carried on by Mr Golding as a sole trader.

758. By 29 January 2016 LCF had advanced a total of £200,000 to Mr Golding. By that date, there was no signed facility agreement. There is no evidence of Mr Thomson conducting any due diligence on the financial ability of Mr Golding to repay the liabilities which he was assuming to LCF, such as by reference to Mr Golding's financial affairs. I find that LCF carried out no such due diligence.

759. On 8 April 2016 Mr Lee sent a draft loan agreement to Mr Thomson, attached to an email entitled, "Loan to Spencer Golding". But it was not signed at this time. Nor was there any security at this stage. LCF nonetheless continued to make substantial payments to Mr Golding. It paid him £100,000 on 22 April 2016 and a further £250,000 on 19 May 2016. Mr Lee sent further drafts of the facility agreement to Mr Thomson on 26 May 2016 (with a limit of £2 million). It was still not signed.

760. A further draft was sent to Mr Thomson on 21 June 2016 but was not signed.

761. By this point, Mr Golding owed £738,225 to LCF on a grossed-up basis.

762. Despite the absence of a facility agreement or security, LCF continued to make payments to Mr Golding, including another £100,575 on 29 June 2019, bringing his total debt (gross) to £906,812, and £25,000 in cash on 15 July 2016.

763. LCF paid a further £201,150 to Mr Golding on 1 September 2016, bringing Mr Golding's total debt (gross) to £1.88 million. Nothing had been signed and there was no security.

764. On 22 September 2016 Mr Thomson emailed Mr Lee asking, "Can you give me an update on the loan doc for Spencer". On 3 October 2016 Mr Lee sent a further draft facility, with a limit of £2 million.

765. The agreement was eventually signed by Mr Thomson and Mr Golding but was falsely backdated to 20 November 2015 to make it seem as though it had been signed before the first advances to Mr Golding. The year 2015 appeared in typescript on the front pages. I find that Mr Thomson and Mr Golding knew it was backdated deliberately to give the appearance that there was a facility in place before the first advances.

766. LCF continued to make advances to Mr Golding, including £1,400,779.50 on 21 July 2017 and £397,300 on 11 August 2017.

767. Steps were then taken to novate the debt payable by Mr Golding. A company called River Lodge Equestrian Centre UK Limited ("River Lodge UK") was incorporated on 11 January 2017. The sole director of River Lodge UK was Mr Rafael Ariza-Sanctuary, who held 50% of the shares on trust for Mr Golding. Mr Sedgwick was instrumental in generating this paperwork (including the trust deed).

768. Mr Lee then prepared a new facility agreement between LCF and River Lodge UK and emailed Mr Thomson about it from 3 May 2017 onwards. There were various versions with different limits. In one the commitment limit was £5 million, of which £1.8 million was treated as having already been drawn down. In a later draft the facility limit was to be £10 million. Mr Golding's liability to LCF (by this time, in the total sum of £6,228,262.64) was expressly treated as having been drawn down under this new facility agreement. In his email of 3 May 2017, attaching the first draft, Mr Lee said he had been coy about the costs of fundraising.

769. The River Lodge UK facility agreement was signed on or about 9 October 2017, with a facility limit of £20 million. Mr Thomson signed this document. The effect of this arrangement was that Mr Golding was relieved of liability in respect of the sums previously advanced to him, which was now to be treated as lent to River Lodge UK instead. Katie Maddock emailed Mr Golding (cc. Mr Thomson) on 11 October 2017 to say that "all loans … [had] been now repaid in full".

770. Mr Golding forwarded this to Mr Barker, who replied, "Nice!" He understood that Mr Golding would not have to repay LCF.

771. On 14 December 2017 LCF paid £904,050 to River Lodge UK, which in turn paid £470,000 to Mr Golding on 9 January 2018.

772. LCF also funded a loan by LCM to Mr Golding. As already explained, Mr Thomson was the sole shareholder and director of LCM. LCF had made regular payments to LCM, which accumulated in its bank account. On 14 November 2018 Mr Thomson emailed

Luke Tofts of GCEN to explain that LCM was going to be lending money to Mr Golding. He said that LCM would be transferring £452,000 to GCEN for onward transmission by GCEN to Mr Golding. Mr Tofts said he would "speak to compliance and try to get it signed off ASAP". LCM paid £452,000 to GCEN on 14 and 15 November 2018. Mr Thomson then emailed Mr Tofts to ask him to send the £452,000 from LCM's account to Mr Golding. Mr Thomson and Mr Tofts had a telephone conversation in which Mr Tofts asked Mr Thomson for a copy of the loan agreement between LCM and Mr Golding. Mr Thomson promised that he would provide this to Mr Tofts and GCEN then paid £452,000 to Mr Golding.

773. In fact, there was no agreement between LCM and Mr Golding, and this was another lie by Mr Thomson.

774. On 3 December 2018 Mr Tofts of GCEN emailed Mr Thomson to again request this agreement, adding, "I put my neck on the line for you with compliance to get these payments made and LCM on-boarded in a very short time frame with no supporting docs, so it looks very bad that I still don't have the docs as they were promised 2 weeks ago".

775. On 3 December 2018 Mr Thomson drafted a loan agreement between LCM and Mr Golding, dated 1 November 2018 in typescript. He sent this (as a Word document) to his assistant, Alex Mannering, presumably for printing. The Word metadata shows it was created on 3 December 2018. Mr Thomson signed it. Alex Mannering sent it to Mr Tofts. I find that the document was deliberately backdated to mislead Mr Tofts.

776. Mr Tofts saw that it was not signed by Mr Golding, and he contacted Alex Mannering, who emailed Mr Thomson to say, "Luke needs the countersigned version of the facility agreement". Alex Mannering reminded Mr Thomson about this on 5 December 2018 ("Document needs countersigning for Luke Tofts"). A further version, purportedly signed by Mr Golding, was prepared on 6 December 2018 and sent to Mr Tofts. It was again falsely backdated. There is no evidence that this document was sent to Mr Golding for signature or signed by Mr Golding. The signature purporting to be that of Mr Golding does not resemble any other known example. I find that his signature was probably inserted by or on the instructions of Mr Thomson.

777. LCF paid a further £750,067.50 to Mr Golding on 4 December 2018. No explanation for this payment has been identified.

778. Mr Golding also received the benefit of sums deriving from LCF in connection with helicopters.

779. Mr Golding purchased a Eurocopter NS355N with registration N766AM ("N766AM") for £520,000, using £500,000 from LCF to fund this purchase. Mr Golding later sold N766AM to Mr Thomson's company, London Financial Group Limited, for £650,000, which was paid to Mr Golding by LCF with the reference "N667AM [sic]". Mr Thomson was the sole director of London Financial Group Limited at that date.

780. Mr Golding also bought a EC135 Eurocopter with registration G-MSPT ("G-MSPT") for £1.65 million plus VAT, with a deposit of £800,000 and the balance in 3 instalments. This was funded by LCF:

i. On 3 March 2017 Mr Sedgwick emailed Mr Thomson and Mr Golding to say that the vendor of G-MSPT was "happy to accept payment from London Capital & Finance PLC without any further due diligence on the identity of the buyer".

ii. On the same day Mr Thomson transferred £800,000 from LCF's account to the vendor's solicitors and told Mr Sedgwick that he had done so. Mr Thomson transferred the first instalment of £393,333.33 from LCF's account to the vendor's solicitors on 16 March 2017. The second and third instalments were paid in May 2017 and June 2017, again funded by LCF.

iii. I find that there was no justification for LCF paying for a depreciating asset for Mr Golding.

781. Turning to Mr Sedgwick, he too received payments which were ultimately funded by LCF and paid through various companies including LOG, London Group LLP, Sands Equity and LV Management (Mr Hume-Kendall's company). The parties have agreed that there were payments of this kind amounting to £559,781.33.

782. During the trial, the court made various third-party disclosure orders against banks. The Claimants claim to have identified further payments to Mr Sedgwick, bringing the total to at least £779,634.11. Mr Sedgwick has not commented on the additional payments.

783. Some of these payments were made against invoices from Mr Sedgwick's company, Sedgwick Company Management Limited. Mr Sedgwick contends that these payments were made in return for services rendered. It appears to be the case that Mr Sedgwick was heavily engaged in providing legal services in connection with the many and transactions described above and it is clear that Mr Sedgwick undertook a great deal of work. The legal consequences of this finding are addressed below.

784. Although the claims against the Hume-Kendalls and Mr Barker have been compromised, there remain some claims which are potentially dependent on claims that they breached their duties to LOG. It is therefore necessary to make some findings about other payments made to them or their companies.

785. Some of the payments made by LCF to Mr Hume-Kendall have been covered already above. In addition, LOG made frequent payments (funded by LCF) to Mr Hume-Kendall's company LV Management, usually in the sum of £20,000 per month. Similarly, London Group LLP made payments deriving from LCF to LV Management, often in the sum of £24,000 per month. Mrs Hume-Kendall also received sums directly from LCF. On 12 May 2017, Mr Barker asked Mr Thomson to pay £190,000 to Mrs Hume-Kendall. Mr Thomson replied, "OK". The same day, LCF paid £186,200 to Mrs Hume-Kendall. There is no documentary evidence to explain or justify this payment to Mrs Hume-Kendall.

786. Mrs Hume-Kendall also received sums deriving from LCF indirectly, via LOG. On 12 June 2017 LCF paid £601,750 to LOG, which paid £200,000 to Mrs Hume-Kendall two days later. The reference was "LOG Share Payment". Again, there is no documentary evidence to explain or justify this.

787. The bank statements contain numerous payments to Mr Barker's company Wealden Consultants. During the period when LCF was lending sums to L&TD, L&TD was

making payments to Wealden Consultants. For example, on 1 April 2016, LCF paid £53,144.18 to L&TD, which paid £12,000 to Wealden Consultants.

788. LCF also made payments to Wealden Consultants directly, as already explained, including £32,700 on 28 April 2016 for "consultancy work" (apparently in connection with an invoice from Mr Golding for "professional services"). LCF paid £10,000 to Wealden Consultants on 25 July 2016 (when it made matching payments to Mr Thomson and Mr Golding).

789. On 12 May 2017 Mr Barker told Mr Thomson to pay £100,000 to Wealden Consultants. Mr Thomson complied: LCF paid £98,000 to Wealden Consultants on the same day.

790. As explained above, sums deriving from LCF were also paid to Wealden Consultants via LCM, LOG and London Group LLP.

The number and identity of the borrowers from LCF

791. I have described the various SPAs which are impugned by the Claimants and made findings in respect of them. It is now possible to summarise the principal lending transactions undertaken by LCF.

792. The first facility was that between LCF and L&TD.

793. The next was between LCF and Mr Golding, trading as Home Farm Equestrian Centre.

794. The next was between LCF and LOG.

795. Then there was the reallocation of the L&TD indebtedness to the five support companies (Atlantic Support, CV Support, Waterside Support, Costa Support and Colina Support) on 29 April 2017.

796. In May 2017 LCF entered new facilities with GRP's subsidiaries (CV Resorts, Waterside Villages Plc, Costa Property Holdings, and Colina Property Holdings).

797. Next LCF replaced the debt of Mr Golding by entering into the facility with River Lodge UK.

798. Finally, LCF lent to London Financial Group Limited, a company of which Mr Thomson was a director and the ultimate beneficial owner.

799. As at the date of the administration the total amount lent to these borrowers was £236.4 million (this included the grossing up to reflect the borrower's obligations to pay Surge's fees).

800. Hence, there was a very small number of borrowers. At the times when the loans were made by LCF they were all closely associated with Mr Golding and Mr Hume-Kendall. Mr Thomson had a beneficial interest in all of the companies other than River Lodge. I have also found that Mr Golding, who had an interest in all of the companies other than London Financial Group Limited, was the ultimate controller of LCF. Mr Thomson and Mr Golding were close business associates of Mr Hume-Kendall and Mr Barker: indeed, the four of them were the beneficial owners of the borrowers and benefited from the various payments made by the borrowers.

801. After some evasion, Mr Thomson ultimately accepted in his oral evidence that all of LCF's lending was to this small, closely connected, group of companies.

Summary of the destination of the money raised by LCF

802. As already explained, LCF raised some £237 million from bondholders. Of this, some £60.8 million was paid to Surge as commission and a further £76.4 million was paid to Mr Thomson, Mr Golding, the Hume-Kendalls and Mr Barker.

803. It follows that at least about 57% of the money raised from bondholders could not have been invested in any income-generating activities of borrowing companies. I find that Mr Thomson, Mr Golding and Mr Sedgwick knew this.

Further involvement of Surge with LCF

804. Surge's early dealings with LCF are described above. To recap, before Surge became involved, Mr Russell-Murphy was working as a salesman for SAFE, earning a commission of 25% of the amount of each investment.

805. Mr Careless initially asked for a fee comprising £500,000 upfront, £500,000 on the delivery of the first £5 million of cash, and 5% of all funds delivered. However, Mr Hume-Kendall and Mr Golding were not keen on the idea of an upfront payment.

806. Ultimately, Mr Russell-Murphy agreed to work as Surge's sales director, with Surge selling the SAFE investment product in return for 25% commissions, on the condition that Mr Russell-Murphy would receive the same amount of profits from Surge as Mr Careless. Surge effectively inherited from Mr Russell-Murphy the arrangement for LCF to pay commissions of 25% on bond sales.

807. Mr Careless was the majority owner of Surge from its incorporation; although for a period his share was held for him by Ms Venn. He was a director of Surge from 7 July 2015, but ran Surge as its CEO from the outset. Ms Venn explained that as CEO he was in control of the business. Ms Venn was the COO and was at times more involved in administrative or legal issues than Mr Careless. However, she reported to him on significant issues. Mr Careless and Ms Venn had a close business relationship and discussed the business continuously.

808. Mr Careless had started to sell leads to Blackmore in 2015. He was seeking ways of making more money. He said in evidence that he was "scraping for funds" and had debts which he needed to settle. Mr Careless was extremely ambitious for Surge and believed it could be expanded. He was an entrepreneur, who had previously succeeded in business.

Mr Careless's general views about the mini-bond marketplace

809. The Surge Defendants knew little about LCF at the beginning of their relationship. Ms Venn had undertaken some rudimentary Google searches (see [246] above).

810. Mr Careless explained in his oral evidence that there was a lot of cynicism about the unregulated mini-bond industry. He also explained that he and his colleagues were cynical about LCF because they thought that people who are trying to build businesses say things which turn out to be untrue or insubstantial.

July 2015 emails

811. In an email dated 9 July 2015, Mr Careless told Mr Pat McCreesh of Blackmore that Mr Careless and Mr Russell-Murphy were joining forces. Mr Careless explained that he had had "to cut a very strong deal" to secure Mr Russell-Murphy, whose "sales skills are second to none". Mr Careless also said that Mr Russell-Murphy had been earning 20% commissions when marketing the SAFE bond and that the product was being rebranded. He said that he was comfortable that the LCF product was not a "rinse" even though he anticipated that Mr McCreesh would be screaming "rinse". Mr Careless assured Mr McCreesh that his involvement in selling LCF bonds would not affect his work selling Blackmore bonds. In evidence Mr Careless accepted that "rinse" meant fraud.

812. Mr Careless said that he did not think that LCF was a fraud at the time he drafted this email. I accept that evidence, but I also find that he had already a strong suspicion that LCF might be a rinse, based on the commission rate (even of 20% - soon afterwards he realised it was 25%). He said in the email that it was "screaming" rinse, and this was his own reaction, not something suggested to him by others. This reaction is consistent with his evidence (just summarised) about his general sense of cynicism or scepticism about the unregulated bond marketplace. Mr Careless also said that after this email he became comfortable. But he conducted no due diligence at that time.

813. He discussed the commission with his long-standing accountant, Mr Partridge. On 23 July 2015 Mr Careless emailed Mr Partridge to say, "Surge Financial Limited … sell a 2 year bond (8% pa) called London Capital & Finance (LCF) … I earn 25% commissions of money into that fund. I know, that's huge right?".

814. Mr Partridge replied on 24 July 2015, saying,

> "As you say this commission is insane. On a flat rate the fund would have to grow by 55% in two years to pay your commission and the interest.
>
> Who are LCF, is this the aim stock?
>
> You 'pay' me to be cynical but I can't see how these figures are sustainable."

815. Mr Careless's colleague, Mr Jones, agreed. He expressed the view that the figures were "incredible" but noted that LCF "[had] been paying them for a number of years according to JRM". He also said that LCF were lending at rates of around 8% per month and were in effect a Wonga for SMEs.

816. Mr Partridge's email raised a very telling inquiry. Any borrower would have to be paying very high rates of interest to meet the 25% commission plus interest. As he said that would require returns of c.55% over 2 years, and that he could not see how these figures were sustainable.

817. Mr Careless was anxious to start selling for LCF because the extremely high commissions would result in huge profits for him. He emailed Mr Partridge on 11 September 2015 to say that he expected that Surge would earn "£200k in comms minimum in September and with £50-60k in outgoings" giving rise to a profit of

£140,000 to £150,000 in a single month. Mr Careless was delighted. He was keen to sustain the large profits and so set challenging targets for his team and had "sales sprints".

818. Mr Careless knew that the 25% commission was being paid directly from the amounts raised from bondholders. There was no other source from which LCF could pay them.

819. He understood, from Mr Partridge's email of 24 July 2015, that LCF would have to make exceptionally large returns (Mr Partridge estimated 55% over two years) to meet the 25% cost. Mr Careless knew that LCF's business model was lending to SMEs. So (using Mr Partridge's figures) it would have to recover principal plus 55% interest over 2 years. I find that he regarded the commission as exceptionally high and realised that it was being offered because LCF was anxious to maximise sales as rapidly as possible.

820. The Surge Defendants' case was that the 25% commission was a "market rate" or "industry standard".

821. They obtained a direction for the service of expert evidence about the market rate for the kinds of services provided by Surge. In the event, the experts, Mr Grainger and Dr Okongwu, agreed that at the outset of Surge's relations there was "no generally accepted market rate for the set of services which are said to have been provided by Surge". I accept this evidence.

822. I also find that the reference to a market rate by Surge was the product of an exercise in justification that was developed by Surge after the collapse of LCF.

823. After the collapse of LCF, Ms Venn and Mr Careless sought to find examples of other businesses paying large marketing fees. Some of the examples Ms Venn found, such as Funding Circle, were not analogous, because the marketing costs were a percentage of those companies' revenues, not the gross sums raised from investors. Ms Venn admitted that she had simply misunderstood the information.

824. Mr Careless sought to rely on a 20% commission paid to Surge by Blackmore as justification for the level of commission paid by LCF. Both Mr Careless and Ms Venn said in their witness statements that Blackmore was paying 20% before Surge started to sell bonds for LCF. That was incorrect. The initial rate agreed by Blackmore when Surge first started selling bonds for Blackmore in June 2015 was only 7.5%. It was only increased to 20% after LCF came on the scene. Surge indeed used its arrangement with LCF as the basis for increasing the Blackmore rate to 20%.

825. Moreover, the Blackmore bond was a 5-year product so, on an annualised basis, the commission payable was 4% per year. This is much lower than the annualised rate of the LCF commission for the same services. The Claimants produced a table which annualised the 25% paid by LCF to Surge over the lifespans of the various bonds, but on a weighted average basis. This was explored with Mr Grainger. The weighted average for LCF was 10.9%. This was more than 2.5 times Blackmore's commission annualised.

826. Mr Careless gave evidence that there were other entities seeking funding for products like a litigation bond which were prepared to pay high marketing commissions. I find that that there are obvious differences. Litigation funding is a different industry with a distinct business model and a different risk profile. Funders realise that there will be a number of losses but hope to make a profit from the wins. Litigation funding cannot be

compared to the business model or risk profile described by LCF in its literature. Ms Venn indeed said in a message to Mr Careless about litigation funding in December 2018, "What other industry can pay 30% for money and make a profit / be unlikely not to go bust." That was a pertinent question. The business model described by LCF in its marketing materials was quite different from a litigation funding business.

827. In my judgment the issue for present purposes is not whether other bond issuers with different business models may have been willing to offer a 25% marketing commission. What matters here is Mr Careless's understanding of how LCF itself could pay 25% given the business model LCF was presenting to investors in its own IMs and other materials.

828. On that question, Mr Partridge had directly raised the question of sustainability and no satisfactory answer had been provided. Mr Jones's suggestion in the email of 24 July 2015 (that LCF was a kind of corporate Wonga) was no answer: as Mr Careless knew LCF was not presenting itself in its marketing materials as providing short-term bridging finance at the extremely high rates of interest suggested by Mr Jones.

829. As to the efforts to find evidence after the collapse of LCF, Mr Careless explained that Ms Venn and her team were trying to find independent evidence that Surge's commission rate was market standard but struggled to find it. On 22 February 2019 Ms Venn asked Nick Morrison of Surge to place an email from Mr McCreesh of Blackmore in a shared folder entitled "Fees Evidence". She wrote, "This is independent evidence that our fees are market standard because a Director of Blackmore, Pat McCreesh, has independently stated that to a client making the enquiry." However, Ms Venn had provided Mr McCreesh with a draft email for him to send to her, so it is of negligible evidential weight.

830. The Surge Defendants relied on an email dated 22 March 2019 from Hydrogard Legal Services which stated, "I was very interested to see your success in raising funds from Investors and I had hoped that you may help us raise funds for our business for a 25 per cent commission." I do not think that this email bears any real weight. There was no evidence about how it came about. The timing is very surprising as it was sent after the collapse of LCF, which had attracted huge adverse publicity and in which Mr Careless had been named. Nor was there any evidence about the business of Hydrogard. The email itself was an odd way to negotiate since it offers 25% in an opening shot. It also referred to the Enterprise Investment Scheme, which involves the allotment of shares in companies. So, it would seem, taken at face value, Hydrogard was interested in marketing shares and not bonds. However, sections 552 and 553 of the Companies Act 2006 only permit commissions of 10% or less for procuring any subscription of shares in a company. Mr Careless also accepted in evidence that he did not even respond to the email.

831. The Surge Defendants also contended that something called "the Highgrove Osprey" bond, issued by a company associated with Mr Russell-Murphy, was prepared to pay high commissions. There was an email dated 30 November 2015 from Highgrove Osprey plc to Mr Russell-Murphy which referred to a meeting with him, Mr Careless and Ms Venn. It said they could pay "a 25% commission and [sic] bond sales and then a percentage of net profits." Surge did not do business with Highgrove Osprey and there is no evidence of the level of commission Highgrove Osprey in fact paid elsewhere. There was no evidence about the business of Highgrove Osprey or the way it was sold to investors. The company went into liquidation in 2020 and the liquidator has filed a report referring to possible claims against parties involved with the company in relation to the

dissipation of sums received from investors. I am unable to place any real weight on this email.

832. The Surge Defendants also relied on an email from Mr Paschalis of Thistle to Ms Venn dated 18 June 2018. This referred to a UK prospect with 5% three-year loan notes. The business was UK property development. The email said they were allocating 25% of the raise to marketing. This email gives some support for the Surge Defendants' case that there may have been other companies which might have been willing to pay 25% for marketing. But I am unable to place much weight on it: there was no evidence about the identity of issuer and nothing about its business model or the risks inherent in it. There is no evidence about the way the issuer marketed its product to members of the public. It is also unclear what was to be included in the marketing budget.

833. The Surge Defendants also relied on an email exchange between Ms Venn and Northern Provident on 20 August 2019, when Ms Venn was seeking to obtain evidence about market rates. Mr Crawford of Northern Provident said that there was a very wide range of pricing, based on either upfront costs or back-end; that 20% is not only sustainable for some firms, but appropriate for everything Surge did. He knew of some cases of 27.5% or 30% but said that was ridiculous given that the business model was not likely to be sustainable. He also knew firms and introducers as low as 10%. Overall, he thought 20% was acceptable. He also said that the key was making sure that the business model could sustain the fee – for example, bridging finance could, but some bonds would not, have the required margin.

834. The Surge Defendants sought to rely on this email. It is inadmissible as opinion evidence. It is from a friendly source. It can be given no significant weight. Mr Crawford also made the point that there was a very wide range of pricing, which did not support the idea of a market or going rate. He also made the obvious point that the sustainability of any fee would depend on the margins in the business. He referred to a bridging loan business (where the interest rates would be extremely high). That was not the way that the business of LCF was being promoted. It was presented as a commercial lender to SMEs with annual rates of 12-20%.

835. Mr Grainger also said in his report that in 2014 a firm called Dolphin Capital was willing to pay introductory fees or 20% on five-year loan notes; 14% on three-year loans and 8% for a one-year loan. He supported this evidence by referring to an agreement from 2014 between Dolphin and an introducer. The document seems to have come into Surge's hands in May 2019: WhatsApp messages from that period show that Mr Careless asked Mr James Hall, who was associated with Dolphin, for help in proving that 25% was the market rate. Mr Hall said he would assist and sent the agreement. There is no evidence that Mr Careless was aware of Dolphin's fee arrangements in 2014. Moreover, on a five-year annualised basis the fee was for 4%. For shorter loans, the annualised commission is higher, but is well below the 25% charged across the board by Surge (on all tenors of loan). Moreover, there is no evidence about the business model of Dolphin or of the way it was presented to investors. I am unable to give this evidence any material weight.

836. As already noted, Mr Grainger's own conclusion was that there was no market rate for Surge's services. He gave some evidence of the fees charged by other service providers (such as fund managers). Mr Grainger said that Surge's services were in fact more complex than those of the other service providers. I found none of these comparisons of any material assistance. In my judgment it is implausible to suggest, as Mr Grainger did,

that Surge, which was essentially a marketing platform and back-office administrator, was providing more complex services than a fund manager, for example. A principal function of a fund manager is to undertake investment decisions, selecting stocks and sectors for investment. Surge did not do this. In any event, Mr Grainger gave no examples of a fund manager charging fees of 25% of the initial funds invested. Mr Grainger's reasoning on these points was implausible and undermined any reliance I could place on his evidence.

837. I also consider that he lacked any relevant expertise in relation to the fees charged by marketing firms. He was an experienced compliance expert. The only evidence he was able to give about fees was some personal experience about fee negotiations when he was part of a business. That is not relevant expert experience.

838. The Surge Defendants correctly observed that Dr Okongwu could not provide any actual evidence about the mini-bond market in 2015-2019. He readily accepted this. However, it was the Surge Defendants who alleged that 25% was the market rate and their own expert gave evidence that there was no standard industry rate for the services provided by Surge. For the reasons just given, Mr Grainger's comparators were unconvincing. There is therefore no persuasive evidence either that 25% was a market rate or industry standard.

839. The experts were also asked to opine about the rate that would have been agreed between reasonable parties in an arm's length transaction for services of the type Surge was providing. Mr Grainger concluded that he had seen no evidence to suggest that the fees in fact agreed were anything other than those agreed between reasonable arm's length parties and that, therefore, it could be assumed that the fee was an arm's length one. That reasoning is circular: it assumes that there had been an ordinary commercial arm's length negotiation, which is in issue. Mr Grainger accepted that he had not seen the evidence in the case, including about the circumstances in which the 25% arrangement was fixed. I place no reliance on his evidence on this point.

840. Dr Okongwu said that a commission of 25% was not credible as it implied a rate of return on LCF's lending which far exceeded the target return that LCF stated in its marketing materials and was far higher than corporate loan rates at the time. I have set out a table prepared by Dr Okongwu in [382] above. Column (7) shows the rates of return which LCF would have had to achieve to match its liabilities to bondholders. This table is conservative as it ignores the 2% arrangement fee. The table shows that LCF would generally have had to earn returns significantly higher than the 12-20% referred to in the IMs.

841. Moreover, the Cliffware Direct Lending Index which tracks the performance of private middle market loans in the US showed an average of 8.5% interest rates for 2015-2019. Although this is for the US, I find that it is a reasonable proxy for interest rates available in the UK at the time. This is supported by the fact that the ICE BofA Sterling High Yield index ranged from 5.6% to 7.6% over the same period.

842. Mr Grainger did not respond to this evidence. He did not comment on the table or the rates of return on corporate lending during the relevant period. He justified this by explaining that he did not regard it as a part of the expert issues. I regarded that as unsatisfactory. The Surge Defendants had asked for permission to serve evidence concerning the commission that would have been agreed between arm's length parties.

The economic analysis set out by Dr Okongwu was relevant to that issue. In carrying out his duties to the court, Mr Grainger should have addressed it. I infer from his silence on the point that he had no real answer.

843. It is also relevant that Surge was making extremely high margins in its business. The contemporaneous emails show that Mr Careless was aware of this at the time. Dr Okongwu has calculated that from 19 January 2015 to 30 September 2018, Surge's total costs were 64.8% of revenues and that the net profit margin was 35.4%. Surge was a service provider: it was not an innovative business and was not putting its own capital at risk. Given the nature of Surge's business, this was an extremely high profit margin.

844. I also note that in his first report Mr Grainger suggested that the net profit margin was 27.6%. That was potentially misleading as it included the period up to 30 September 2019 (and therefore more than three quarters of a year after the collapse of LCF and the cessation of new LCF business for Surge). Mr Grainger refused to engage with Dr Okongwu's calculations for the 30 September 2018 on the basis that it was outside the scope of his instructions. I find his stance remarkable, given that he included the calculation up to 30 September 2019 in his own report, which was served first. This again served to undermine my ability to rely on him as an independent expert.

845. I find on the basis of the expert evidence that the commission of 25% was not a credible rate that would have been agreed between arm's length parties, given LCF's business model (as represented to investors) as a corporate lender to the SME sector at 12-20%. As explained above there was no market rate.

846. I find that the actual reactions of Mr Careless and Mr Partridge a better indicator of the market view at the time. They called the commission "huge" and "insane". They would not have said that if they had thought the fee was no more than a going market rate.

847. I find that the fee had nothing to do with any industry standard. The Surge Defendants indeed had no role in negotiating it. Mr Careless had an arrangement with Mr Russell-Murphy by which Mr Careless and Mr Russell-Murphy would be equal partners on the basis that they would continue to be paid the 25% commission which Mr Russell-Murphy was already receiving from LCF (as SAFE).

848. Indeed, Mr Careless knew that the commission rate was so large that he was prepared to split his share of Surge with Mr Russell-Murphy. Mr Russell-Murphy for his part had had a business relationship with Mr Golding for over 15 years.

849. Moreover, as explained further below ([1109] to [1120] and [1323] to [1350]) Surge later entered arrangements, first with Mr Thomson and later with Mr Golding, to pay them (in turn) monthly sums of 0.5% and 1% respectively of the gross monthly receipts from bondholders. As explained in those passages, I find that Mr Careless agreed to these arrangements as an inducement to maintain Surge's fee at 25%. Mr Careless accepted in evidence that Mr Thomson was always trying to reduce Surge's fees. It is inherently unlikely that Surge would have been prepared to pay these inducements if there had been a market rate of 25%. I find that Mr Careless was prepared to pay these sums because he knew that the 25% fee was exceptionally high and he wanted to ensure that it continued.

850. It is also instructive that the size of the commission was never disclosed to investors. It would have put them off. Mr Thomson and Mr Careless both knew that it would be

material to any investment decision. Mr Careless accepted this in evidence but said that Surge was merely the marketing firm and that it was not its decision what to include in marketing materials. Ms Venn accepted that if the 25% commission had been disclosed it would have led to an extremely low conversion (i.e. investment) rate. In my judgment if LCF had disclosed the 25% commissions, bond sales would probably have been far lower than they were; indeed may have been minimal.

851. This is further reason for concluding that the 25% fund-raising fee was not a market or going rate for mini-bonds. If there had been such a going rate, it would have been materially the same for all such bond issues and there would have been no reason not to disclose it.

852. The reason why investors would have found the 25% off-putting is that they would not have been satisfied about the sustainability of LCF's business model, which was essentially described as making a turn on lending out funds to borrowers.

853. I find that for the same reasons, Mr Careless, who had a far better understanding of LCF's business than members of the public, had real concerns from July 2015 onwards about the sustainability of the business model in light of the 25% fee. He was generally sceptical about the mini-bond industry and here was a business offering huge or insane commissions. But he did not ask questions about it because he was anxious to make as much money as possible. He also persuaded himself that he would be able to justify Surge's actions by saying that it was simply the marketing agent and was not making the decisions about the business or how it was sold.

Work in July 2015 to build the brand

854. In July 2015 Mr Careless, Ms Venn, and their team worked on the website and branding materials for LCF, including a document dealing with "objections and their rebuttals" for members of the public interested in investing in LCF. "Objections" was the way the salespeople described potential investors' queries.

855. So that they could effectively market LCF's bonds, Mr Careless, Ms Venn, and Mr Russell-Murphy and their team required further information about LCF. This included the number of loans issued, the types of loans, the purpose of the loans, the average term, the interest rates, and testimonials from borrowers. They sought this information from Mr Thomson. A draft Buss Murton letter was circulated stating that LCF had lent out £1.1 million to borrowers. Mr Careless said in an email dated 20 July 2015 that the reference to this figure should be removed, because it "makes the entire operation look very small"; Ms Venn agreed because prospective investors would have a "natural expectation" that LCF "is a multi-million pound organisation". The figure was then removed from the draft letter.

856. I find that Mr Careless and Ms Venn knew at that stage that LCF was still a small operator but was being presented as a substantial lender to the SME sector.

BIF and BSR

857. Mr Careless wanted LCF to be listed on www.best-investment-funds.co.uk ("BIF"). Mr Careless accepted in evidence that the BIF site was run by him and Ms Venn.

858. This listed a series of lending products. It appeared to be an objective comparison website. But Mr Careless described it in a to-do list in August 2015 as a "bullshit site". I find that this reflects Mr Careless's understanding that it was designed to give the impression that it was an independent comparison site, when this was not the case. Mr Careless charged LCF £1,000 to be listed on the site, despite Mr Careless running it.

859. To assist with the sales of LCF's bonds, Mr Careless set up another website, Best Savings Rates ("BSR"), which also appeared to be an objective comparison site. It went live on or about 17 November 2015. Later he set up other comparison websites, including Best ISA Rates ("BIR").

860. The purpose of these websites was to take people through LCF's online application process, as Mr Holdaway of Surge noted in an email to Mr Careless dated 10 September 2015: "We are going to be building a website that lists 10 or so accounts where a person can put their savings, like a comparison website. This will be used to push people through an online application process for LCF".

861. Mr Careless said in evidence that the website was not used to push people through to LCF's online application. He said it was a form of advertising.

862. I find that the website had the following features. It appeared to be an independent comparison site, but was in fact run by Surge. Surge decided which products to list and how to rank them. The site also allowed potential investors to click via icons to LCF's online application process. I find that it was used to seek to attract investors and push them through the application process.

863. The result was that members of the public could "sign up, hands free, directly into LCF" (i.e., by clicking through to LCF's website and applying online, without any input from Surge's sales team). Mr Careless explained this in an email of 13 October 2015.

864. Another intended benefit noted in the same email was that "Best Savings rates will appear on Google for any search of LCF or its derivative search terms and can also be used as a direct sales aid by the sales team. This will enhance trust and therefore sales". I find that this shows that Mr Careless knew that BSR would be treated by investors as independent (thereby "enhancing trust").

865. The third benefit listed by Mr Careless was that the website captured the name and contact details for the potential investor, creating a lead to be called by a salesperson from Surge's office.

866. The rankings of the investment products on these websites were not based on any objective evidence. Instead, the websites were arranged by Surge with LCF in first place:

    i. On 24 May 2017, for instance, Mr Holdaway emailed Mr Careless, Mr Russell-Murphy, Ms Venn and Mr Jones to explain, "[t]oday we are moving LCF to the top of all three of our comparison websites, and Blackmore will sit in fourth on all three. The traffic that was formally [sic] being driven to Blackmore, but not converting, will now be pushed through LC&F. LC&F will naturally see an increase in traffic, leads and sales".

ii. On 23 November 2018 Ms Baldock emailed Mr Careless and Mr Russell-Murphy to say, "I propose we switch LCF back to the top of BIR until the end of November".

867. In oral evidence Mr Careless accepted that the rankings on BSR and BIR were not based on any objective evidence, but on which products Surge wanted to boost the sales of at any given time and that the ranking was set to optimise conversion rates. Mr Careless also admitted that LCF was placed at the top of BSR because he wanted to optimise its position in order to maximise Surge's commission.

868. Mr Careless accepted in his evidence that Surge had set up BSR in such a way as to encourage members of the public to think that LCF had been independently and objectively ranked. I find that the BSR and BIR websites were materially misleading because they were presented as independent, but in fact were run for Surge's (and LCF's) benefit. Surge had a financial interest in maximising sales of LCF's bonds. I reject Mr Careless's evidence that they were independent because they were not owned or run by LCF itself. Surge had a clear financial interest in selling LCF bonds. Indeed, its interest was aligned with LCF's. Nor was I able to accept his suggestion that the sites were justified by the fact that he was running a marketing company. The sites were misleadingly presented as independent comparison sites.

Queries about integrity

869. On 23 September 2015 Mr Bailey, a Surge salesman, emailed Mr Russell-Murphy and Mr Careless (cc. Mr Jones and Ms Venn) to say:

> "I had a call from a client investing in LCF this morning which has made me begin to question the integrity of this investment … I reassured the investor I would not have any part in a scam that was taking people's hard earned money … I feel totally uneasy about this and the potential issues our company could be faced with … John, can I ask you what due diligence you have carried out on LCF?"

870. In his oral evidence, Mr Careless said in relation to Mr Bailey's concerns "I agree with the entirety of the email". This was a significant answer. Mr Bailey's email said that he was "totally uneasy" – he did not merely express a vague sense of unease.

871. At this stage, however, no due diligence had been conducted into LCF. Mr Careless disputed this in his evidence, but was unable to point to anything that had been done, other than speaking to Mr Russell-Murphy and Ms Venn's basic internet searches in February 2015.

872. Mr Russell-Murphy responded to Mr Bailey's email:

> "With regards to the product itself, when SAFE originally launched their bond, I carried out an enormous amount of DD at their office, which also involved BM Law as well. The important things like the security and contracts were disclosed and confirmed suitable by BM law, which then led on to BM law being happy to be involved as their custodian".

873. Mr Careless knew that Surge had undertaken no real due diligence. Though Mr Russell-Murphy referred to an enormous amount of due diligence, he gave almost no details about what he had done. Any steps he had taken were historic at best: Mr Careless knew that LCF had been a small operation and was looking to expand rapidly. So, any inquiries about security etc. would have been out of date.

874. Mr Careless did not ask Mr Russell-Murphy for more details about the due diligence that had been carried out. Instead, Mr Careless said in the same email chain that this was a "[g]reat response" to Mr Bailey's email. His email did not say anything to address the "totally uneasy" feeling expressed by Mr Bailey about LCF.

875. I find that this again shows that Mr Careless did not wish to ask questions, even when (according to his own evidence) he agreed with Mr Bailey's totally uneasy feelings about LCF. He was more anxious about getting on with the business and earning commissions.

Loans from Mr Golding

876. Surge started selling mini-bonds for LCF in early August 2015 and wanted to make a big sales push, but Mr Careless could not afford to do this from his own resources. On 15 August 2015 Mr Careless emailed Mr Golding to ask for a loan of £20,000. Mr Careless explained to Mr Golding that this would enable Surge to pay for a sales drive:

> "We would increase to five sales guys for two weeks, working from our offices in Eastbourne where they can be driven by John. They are normally commission only but we will pay them £1k each for two weeks to push hard and work from our offices. The cash would also allow us to increase their lead volumes from 4 leads a day to 15 a day for that ten day period. During this sprint we would look to put at least £2m into LCF".

877. Mr Careless proposed that the loan made by Mr Golding would be repaid by reducing the commissions charged by Surge to LCF to 12.5%. This is further evidence that Mr Careless understood Mr Golding and LCF to be closely linked; indeed, that LCF was Mr Golding's company.

878. Mr Golding agreed to provide a loan of £25,000 to Surge on 18 August 2015, and a further loan of £25,000 to Surge on 3 September 2015.

879. These funds enabled Surge to boost its efforts to sell LCF's bonds, which Surge's personnel pursued vigorously. Mr Careless hoped to raise more than £1 million for LCF by the end of September 2015.

880. In a month or so, Surge had gone from making very little to over £100,000 per month. in profit.

881. By late October 2015, Mr Careless had set a target of £1.5 million gross receipts into LCF by the end of November 2015.

882. By mid-November 2015, he stated that £2 million for that month was becoming "a distinct possibility".

Growth in profits for Surge

883. Selling LCF's bonds was extremely profitable for Surge from an early stage. The pace of progress took Mr Careless and his colleagues by surprise.

884. On 22 September 2015 Mr Jones told Mr Careless that they might reach £260,000 in commissions for the month. Mr Careless replied, "200k profit for one month … Oh and we are embryonic".

885. Mr Careless hoped that a high level of commissions and profits might enable him to buy a helicopter, particularly when combined with other business ideas. He referred to this in an email of 22 September 2015, "9 days of sales left too. Plus, I have pensions and best savings rates. Hello helicopter...".

886. On 28 September 2015 Ms Maddock of LCF told Mr Jones that LCF's account would shortly be credited with £170,000 from new bondholders. Mr Jones forwarded this to Mr Careless, adding, "That should be another £47k comms tomorrow!" Mr Careless was excited about this. He forwarded the email to his father, Mr Partridge, and Mr Ronak Patel, an old friend.

887. On 23 October 2015 Mr Careless told Mr Jones that if Mr Russell-Murphy and his team hit £1 million in sales per month, resulting in £250,000 in commissions, Surge would make a profit of £200,000 per month. Mr Jones agreed in principle but thought that Surge's monthly expenditure would be closer to £65,000 (rather than £50,000) (so that Surge's monthly profit would therefore be £185,000 rather than £200,000).

888. By the end of January 2016 Surge had made profits of £353,870. Mr Russell-Murphy and the other salespeople working for Surge were highly successful in selling LCF bonds to members of the public, generating substantial commissions and profits for Surge.

889. On 29 January 2016 Mr Jones provided Mr Careless with an update. Mr Careless forwarded it to his father, saying, "Fyi Pops. £180k cash in bank. £140k certain next week. £350k probably next week. Feb we go for £1m revenues and £650k net profit".

890. On 17 June 2016 Mr Careless sent a text stating, "56k comms. One fucking day … Dude, we are making a fucking fortune".

891. Mr Careless had set a new goal of £4 million per month ("[w]e will hit our 4 million goal, it's achievable and we are on target. Double income, bonuses all round").

892. Mr Russell-Murphy emailed Mr Careless on 16 May 2017 to say, "[my] main focus as always will be to push LCF, this is our cash cow, and I won't stop until the 4m target is hit". Mr Careless agreed with what Mr Russell-Murphy had said. He replied, "I'm with you!".

893. Mr Careless appreciated that this success was largely due to the deal that Mr Russell-Murphy had negotiated for the payment of 25% commissions. He said this to Ms Venn on 10 August 2016, explaining, "[w]ithout JRM we wouldn't be here today. He increased comms to 25%, it's the main factor in our current success". Mr Jones thought Mr Russell-Murphy was overpaid for the work he was doing. Mr Careless told Mr Jones in an email of 30 November 2016 that there needed to be equality between Mr Careless's payments and Mr Russell-Murphy's, because that is what Mr Careless had agreed with Mr Russell-Murphy in connection with the 25% commissions.

894. The growth of sales into 2016 and 2017 is described further below. The commissions payable to Surge continued to grow and Surge's profits continued to increase. Its accounts show that in the twelve months to 31 January 2017 Surge made a post-tax profit of £2,440,680.

895. On 11 May 2017 Mr Jones emailed Mr Careless to say that Surge was averaging net profits of £800,000 per month and was on track for net profit of £800,000 for May 2017. He said that if Surge's total sales were to reach £9.5 million a month, Surge's profits "[would] hit £1m a month, with costs pretty fixed at that point, anything over these figures will translate directly to bottom-line profit figures. Anything we are able to shave from costs will also drop directly in to the bottom-line".

896. The LCF bonds were proving to be much easier to sell than the Blackmore bonds. The feeder websites like BSR were being directed to LCF instead of Blackmore. Mr Holdaway explained in an email on 18 October 2017, "With three feeder websites and only a finite amount of traffic I need to ensure that we are allocating traffic as efficiently as possible. Over the last 6 months we have leant [sic] LCF the vast majority of traffic as Blackmore simply wasn't converting".

897. When Mr Holdaway proposed an adjustment to the allocation of web traffic, Ms Baldock agreed on the basis that "the main aim is to generate the maximum amount we can for Surge as a group" and "LCF is the cash cow of the business."

898. On 29 July 2018 Ms Baldock told her colleagues that "LCF [is] the cash cow that supports Surge and has allowed the company to grow to where it is today."

899. The description of LCF as a cash cow was currency within Surge.

Payments to Google and others

900. Surge's largest single expense was the cost of what is known as "advertising" on Google. Payments were made to ensure that LCF would appear near the top of relevant searches. These ran to many millions of pounds.

901. Surge also paid for advertisements on Facebook, although this cost was relatively low in comparison to the payments to Google.

902. There were also the costs of advertisements for LCF, as well as advertisements for the feeder sites like BSR, which promoted LCF and Blackmore.

903. The advertisements on Google and Facebook were paid for via another company, RPDigitalServices Limited ("RP Digital"), which had been set up by Mr Careless and his friend, Mr Ronak Patel (the RP in its name). It was controlled by Mr Careless and Mr Jones.

904. RP Digital passed these costs on to Surge, with a mark-up. This led to payments of additional sums to Mr Careless, Mr Jones and Aston Beckworth Limited ("Aston Beckworth"), another company owned and controlled by Mr Careless.

905. RP Digital's bank statements show that the receipts from Surge exceeded the payments to Google and other companies. The bank statements from 5 December 2015 to 4 May 2016 show that RP Digital paid most of this surplus to Mr Careless and Mr Jones. The

bank statements from 5 June 2016 to 14 August 2018 show that RP Digital also paid large part of the surplus to Aston Beckworth.

906. The sums paid by Surge to RP Digital were not calculated on any precise basis. There does not seem to have been any standard mark-up.

907. The way the account of RP Digital was run by Mr Jones is shown in an email he sent to his son, Mr Newman-Jones, on 3 August 2017, to provide guidance while he was away. The account was used to pay expenses and was topped up as and when needed by delivering invoices to Surge. In an email of 15 August 2016 Mr Newman-Jones explained to Mr Jones that he had sent Mr Careless £30k from RP Digital's account the previous day for his car, so he had topped RP Digital up with £30k from Surge.

The reference to Madoff

908. Returning to events in late 2015, Mr Careless texted Mr Jones on 27 October 2015 saying that, "Mark thinks Spencer [Golding] is Maddoff [sic]." Mark was Mr Partridge. Bernard Madoff ran a notorious Ponzi scheme.

909. Mr Careless said in oral evidence that this was a joke, made over a drink.

910. He also said, and repeated the point many times, that Mr Partridge was well-known for his cynicism and could find fault anywhere. In closing, the Surge Defendants referred to some emails which, they said, showed Mr Partridge's general cynicism.

911. I find as follows.

   i. Mr Partridge's comment was partly a joke. But it would only have been funny if Mr Partridge had thought it had some truth in it. Mr Careless took it seriously enough to relay Mr Partridge's comment to Mr Jones.

   ii. Mr Careless said in his oral evidence about this episode that while "the industry was awash with … unusual products", LCF was "using PwC" and "barristers from Lewis Silkin". But at the date of Mr Partridge's comment, PwC had not conducted an audit and Mr Careless had not met anyone at Lewis Silkin. This evidence was confused.

   iii. Mr Partridge's comment was not free of context. He had already queried LCF's business model its sustainability in light of the 25% fees.

   iv. Mr Careless explained in his evidence that he was sceptical generally (as he put it "cynical") about the unregulated bond industry (see above) and there is nothing to suggest that he was remotely surprised by Mr Partridge's remark. It echoed his own thoughts.

   v. Mr Careless was also aware by this stage that the interest rates being offered by LCF to its investors were far higher than those offered by competitors (see further below).

   vi. Mr Careless thought (for the reasons already given) that Mr Golding was the ultimate controller of LCF. He knew that Mr Golding was interested in the companies which had borrowed from LCF. A common feature of a Ponzi scheme

is that investors' funds are used for the personal benefit of the people running the scheme; as well as new money being raised to pay existing investors.

vii. Subsequent emails show Mr Careless and Ms Venn using the term "Ponzi", which shows that it was something they continued to discuss after 27 October 2015 (see below). As explained below, they did not treat the Ponzi issue as a joke.

912. More generally I reject the repeated refrain of Mr Careless's evidence that everything Mr Partridge said was shot through with cynicism. The other emails relied on by the Surge Defendants in closing in fact showed that Mr Partridge gave considered advice to Mr Careless (even if he sometimes used jokes). Mr Careless described him as a trusted long-term adviser.

913. I find that Mr Careless generally trusted Mr Partridge's judgment and did not dismiss his comparison of Mr Golding and Bernie Madoff lightly. By this date at the latest, Mr Careless had serious concerns about the integrity of LCF, but that he was too attracted by the prospects of making money to ask questions.

Further marketing in late October 2015

914. Ms Venn wrote an email on 29 October 2015 to Mr Thomson, Mr Ingham and others saying that the theme they should present in the sale literature was something substantial, safe and secure. LCF should be sold as a financial institution, verified by trusted, regulated, independent bodies.

Suggestions in webchats that LCF's rates were too good to be true

915. As explained above, Mr Careless, Ms Venn and Mr Jones ran www.investment-experts-online.co.uk. Some members of the public asked questions on this site about LCF, including whether the extremely high rates of interest meant that LCF was too good to be true.

916. For instance, on 7 December 2015 a member of the public submitted an enquiry: "How safe is your money in an investment bond, such as those offered by London Capital and Finance. They are offering 8% p.a. on a three-year fixed rate bond. Are these figures too good to be true?" This was received by Mr Careless, Mr Russell-Murphy, Ms Venn and Mr Jones. Mr Careless said, "Very interesting". He forwarded it to Mr Partridge and his friend Mr Patel. I find that he did so because he thought it was a serious point.

917. On 15 December 2015 another member of the public asked: "London Capital and Finance are doing a three-year bond with an 8% interest rate, does this seem too good to be true? Is this a reputable company with financial equity in the event of going bust, as I wish to invest a large sum. Will my money be safe?". Again, this was received by Mr Careless, Mr Russell-Murphy, Ms Venn and Mr Jones.

918. LCF's rates of interest had indeed caused a problem when setting up BSR, as Ms Venn explained to Mr Careless, Mr Jones and others on 23 September 2015:

> "1. You will note that LCF is only listed in the 1 year bond option.
>
> 2. The rate is 2.7%.

> 3. The minimum balance is £2k.
>
> Why?
>
> 1. We currently sell the 2 year bond for 8.5% the average 2 year bond in the comparison table offers 2%. I was faced with a dilemma: I could not put 8.5% next to 2% and remain credible. I could not offer a 2 year option close to 2% because any client going to the LCF website would see that it is being marketed at 8.5%. Therefore we will only offer the 2 year bond via an assisted sale for 8.5% (business as usual) we will only offer a 1 year bond (2.7%) via the hands free online sale.
>
> 2. I have proposed a rate of 2.7% to LCF because it is higher than – but still in line with – the competition. 8.5% would stand out like a sore thumb next to 2%."

919. Ms Venn put together a table for the website, ranking the best products by interest rate. The highest interest rate apart from LCF was 2.1%.

920. In his oral evidence, Mr Careless acknowledged that to include LCF's 8.5% bond on this site would not have been credible. He refused however to accept that the interest rate offered by LCF was not credible. He said, implausibly, that there were lots of other lenders offering high rates for equivalent products. I find that is improbable because Ms Venn would simply have listed them on BSR to avoid the problem. He also suggested that the reason these other products were not included on BSR was that they were not paying a fee to be listed. I reject this too because there were products which were listed from providers who did not pay fees. I found Mr Careless's answers on this point to be evasive and unconvincing. I find that he was troubled by the high rates of interest and thought they might be too good to be true.

921. On 25 November 2015 Ms Venn observed in an email to Mr Careless and others that LCF "pays a significantly higher rate by comparison" with the other listings on BSR on the 3-year page. She said, "Could be a positive and could be a negative". The LCF bond was offering 8%; the other listings on BSR at that time were paying interests rates of 4.4%, 2.5%, 2.44%, 2.4%, 2.3%, 2.75% and 3% per annum.

922. Members of the public continued to submit enquiries on www.investment-experts-online.co.uk asking if LCF was "too good to be true". Some members of the public who had learnt about LCF on BSR would then ask www.investment-experts-online.co.uk whether it was legitimate: "I am thinking of investing £10,000 with LCF in a protected bond. The interest for one year is 3.9% and 6.5% for two years. This seems very high compared with other rates on offer. How safe is my investment?"

923. Mr Careless was aware of these inquiries as they were forwarded to him. Equally, members of the public regularly sought to contact LCF, asking whether it was "too good to be true"; their queries went to Surge. Transcripts of their online conversations were sent to Mr Careless and Ms Venn.

924. I find from these various emails that from September 2015 onwards, Mr Careless thought that the interest rates being offered by LCF for some of its products were extremely high

compared to the competition; and that (given his general background scepticism about mini-bonds) this was an obvious reason for concern about LCF's legitimacy.

No information about LCF's borrowers

925. LCF was presented as a lender to the SME sector. But it never said anything about the identity of its borrowers. This was on its face surprising since a genuine lender in LCF's position would be expected to bolster the solidity of its offer to investors by giving details of at least some of its borrowers.

926. Surge certainly thought that giving some information about borrowers, if only in the form of case studies, would be a valuable marketing tool. They repeatedly sought to persuade Mr Thomson to supply such details.

927. This part of the history requires a revisit to the events of July 2015. On 16 July 2015, Ms Venn emailed Mr Russell-Murphy to say that she was:

> "trying to build a picture of the success [and] selling points of the business and always like to lead with facts and figures as these increase credibility, it would help to know: How many (approximate figure) loans to date, how many defaults, type of loan i.e. for what purpose, average term, interest rate (I believe it is arranged according to risk level, please elaborate), Size of companies borrowing?"

928. She requested case studies and testimonials from borrowers. Mr Russell-Murphy forwarded her email to Mr Thomson. However, Mr Thomson did not provide any of the requested information about LCF's borrowers.

929. On 20 July 2015 Mr Russell-Murphy sent a chasing email to Mr Thomson. He replied (cc. Mr Barker and Mr Golding) to say that he was working on it but did not respond further.

930. On 29 July 2015 Ms Venn reverted to Mr Thomson about this subject:

> "Reading about how Mr X – from a real company that they can see on the internet – was able to benefit from finance that the bank refused and it enabled him to purchase stock / take advantage of opportunities that resulted in him increasing his turnover by 25%, etc… Good success stories really help to sell the bond because investors can see the actual need and results".

931. Mr Thomson did not provide the requested information. Ms Venn mentioned it again on 30 July 2015. He still did not provide it.

932. Ms Venn also discussed this issue with Mr Golding.

933. On 13 October 2015 Ms Venn emailed Mr Golding, cc. Mr Russell-Murphy: "Spencer, As discussed, I have been waiting for the Case Studies for some time. I had a look back through my emails and can see I first requested this on the 29th July". Nothing came.

934. A related issue that was causing Surge concern at this time was the absence of a lending page on LCF's website. There was nothing to give credence to the idea that prospective borrowers could apply to LCF for a loan. This undermined LCF's credibility.

935. Surge therefore created a plausible-looking lending page. Mr Espinoza of Surge designed a lending page for LCF's website. Mr Russell-Murphy provided comments on it.

936. Mr Careless said in an email of 14 January 2016 to Ms Venn and others (cc. Mr Partridge), "[w]e need the lending page on LCF going live and with it we need to add what a normal company we would lend to look likes. i.e. £10m turnover; looking for £500k over 6 months; Company has £4m in Company Assets for protection of our loan".

937. The lending page (even that created by Surge) never actually went live.

938. Mr Careless thus knew that there were no details of lenders and no lending page. He believed it to be in LCF's interests to provide some case studies and to have a lending page. The failure to give this information and set up a page were further reasons for concern about LCF's integrity whether LCF was conducting a genuine lending business to SMEs.

The decision to undertake light touch due diligence

939. In December 2015 Mr Careless decided that Mr Partridge should conduct some due diligence into LCF.

940. To recap, by this stage Mr Careless thought the 25% commission was "huge"; Mr Partridge thought it was "insane" and possibly unsustainable; Mr Partridge had made the comparison with Bernard Madoff; various members of the public had said the interest rates appeared too good to be true; Ms Venn had said that the interest rates could not credibly be listed alongside those of competitors; Mr Thomson had failed despite requests to provide any details of borrowers; Surge had identified the absence of an LCF lending page; and Mr Careless thought that Mr Golding, who was not a director, was in control of LCF and was interested in the borrowing companies. The only due diligence that Surge had undertaken was the rudimentary Google searches in February 2015 before the first meeting. Moreover, as Mr Careless explained in evidence, they (Mr Careless, Mr Partridge and Ms Venn) were generally cynical (i.e. sceptical) about the unregulated mini-bond market.

941. On 8 December 2015 Mr Careless emailed Mr Partridge to discuss the idea of conducting some light-touch due diligence on LCF:

> "I couldn't get hold of Spencer last night but will do today. I have a plan to make the necessity of the DD seem more run-of-the-mill and less holly-shit-this-better-not-be-a-ponzi. Ill basically say that as Spencer is looking to revise an offer to be involved exclusively with us in one way or another we want to run some DD to make the process easier down the line.
>
> Spencer doesn't like getting emails. I know, I know.

> But you will be getting an intro email to Andy Thomson later. I would start with a call with him to get an overview before you request the evidence you need.”

942. Mr Careless said in oral evidence that he was persuaded by Mr Partridge that some due diligence was required. The email plainly follows earlier discussions between them.

943. Mr Careless said in evidence that nothing should be made of the reference to the possibility of a Ponzi scheme and called it a colloquial, throw away, comment. His counsel advanced the same argument in closing. However, it is shorthand for a fraudulent investment scheme; and it was his comment. Mr Partridge had already drawn the Madoff comparison. It is probable that they had discussed the real possibility of LCF being a Ponzi scheme. This conclusion is reinforced by the fact that Mr Careless had clearly given thought to a way of sweetening the need for due diligence by saying that it arose from the discussions about the exclusivity agreement. He recognised that due diligence was needed. Mr Careless indeed accepted in his oral evidence that he would not have thought due diligence was necessary unless there was a real risk that something could be wrong in LCF. I therefore reject the suggestion that this was a mere joke or throw away remark.

944. At another point in his evidence, Mr Careless said of the “Ponzi” allusion in this email that he was in an industry which was renowned for having products which were not very good. In other words, this was part of a broader concern with mini-bonds. This supports the view that he and Mr Partridge had a real concern by late 2015 that LCF might well be a fraudulent scheme.

945. Mr Careless also accepted in oral evidence that to establish that LCF was not a Ponzi scheme, Surge needed to know how the underlying assets performed, and how the bondholders’ coupon and Surge’s fee would be paid.

946. Mr Careless emailed Mr Partridge (cc. Mr Russell-Murphy) about this issue again on 10 December 2015 to say, “[w]e need to conduct this DD with a light touch”. In oral evidence, Mr Careless said that he did not want to jeopardise Surge’s 25% commission or to cause Mr Thomson or Mr Golding to get annoyed with him, as they might do if he asked awkward questions. He wanted to maintain the commercial relationship.

947. Mr Partridge replied on 10 December 2015 saying, “[i]f they have nothing to hide, they shouldn’t be concerned about DD”. Mr Careless accepted in oral evidence that his concerns that Mr Thomson or Mr Golding would only be likely to get annoyed by due diligence if they did indeed have something to hide. I find that Mr Careless had real concerns that there might be something wrong with LCF but wanted to avoid jeopardising Surge’s commissions.

948. Mr Partridge said in the same email of 10 December 2015:

> “The better news is that LCF have now had to be audited as they are a plc.
>
> But for some reason they reported a single month period shortening their year end from March 2016 to April 2015???

> The worse news is
>
> All their loan book is lent to Thomson's company! This loan (or some of it not clear) was then shifted to International Resorts Group, a company that Thomson used to be a director for.
>
> So it could be that the liabilities now have no assets to back them up.
>
> It may all be innocent but is very convoluted."

949. Mr Careless knew from his meeting with Mr Golding and Mr Hume-Kendall in February 2015 that International Resorts Group was connected with the two of them. It had been described as "basically a land bank". He accepted in his oral evidence that a land bank would not make profits. Hence, Mr Careless knew that LCF's only loan was to a land-bank business which was not generating profits. He knew that it was connected with Mr Hume-Kendall and Mr Golding. He knew that LCF was having to pay bondholders their coupon and Surge's commission. I find that this is why Mr Partridge described it as "the worse news" and that this was another worrying development. I find that it is likely that Mr Careless discussed these matters with Mr Partridge and Ms Venn.

950. In his evidence, Mr Careless said that his primary focus was the value of LCF's security and that this mattered more than anything else. I do not accept that he thought that he was so single-mindedly focused on security at the time. Surge had very little information about LCF's security at that stage. But in any case, if LCF were not investing in income-generating businesses (capable of repaying their loans from their income), the obvious inference would have been that it must have been using new bondholders' money to pay the existing bondholders' claims; in other words, that it was in the nature of a Ponzi scheme. I find that Mr Careless and Mr Partridge were concerned that this could well have been what was going on.

951. Mr Careless then emailed Mr Thomson (cc. Mr Partridge and Mr Russell-Murphy) on the 10 December 2015:

> "We want to better understand how LCF operates to assist in both our sales and also from a commercial prospect. As it is way above my pay grade and JRM is snowed under I have asked Mark Partridge, our accountant to liaise directly with you. We anticipate at least £50m into LCF bonds over the next 12 months and it would be helpful for us to ensure we know how the underlying assets work in more detail. Can I leave Mark in your capable hands to provide him with those details please."

952. Mr Thomson did not respond. On 13 December 2015 Mr Careless emailed Mr Partridge, saying, "Give him a nudge … for me please".

The limited information about borrowers

953. As explained above, Surge had asked Mr Thomson for information about borrowers. He did not do so. Prospective bondholders often sought information about how their money would be used by LCF to generate a return and this caused problems.

954. On 16 December 2015 Ms Venn asked Mr Thomson, "How many borrowing companies are there at this time and what is the average loan size please?" Mr Thomson replied, "To date the company has c. £5,000,000 under management … Currently we have in place funding lines for an additional £10,000,000 split over 5 company's [sic]".

955. Ms Venn forwarded this to Mr Careless and Mr Partridge, commenting, "See Andy's comments regarding the £10m over 5 borrowing companies. I'm interested to know if all 5 are ultimately under the same/connected ownership." Mr Careless agreed in his oral evidence that this was a pertinent question to ask.

956. It was pertinent for at least two reasons. First, the picture being presented to bondholders was that LCF was lending to independent borrowers in the SME sector. Second, Mr Partridge and Mr Careless had already raised the prospect of LCF being a Ponzi scheme, a common feature of which is that the people running an investment vehicle have access to investors' funds for their own purposes.

957. Later the same day, 16 December 2015, a prospective investor asked Ms Venn by email, "Am I correct in thinking that you were reluctant to tell me how many borrowers you have on your books?" He also said that he was keen to understand the customer list; and pointed out that if there were ten borrowers and one went bust that could be serious, but that if there were a hundred it would not be.

958. Ms Venn replied to the customer on 17 December 2015, saying that the information about the number of borrowers was not forthcoming as the company felt it was commercially sensitive information which they were unwilling to disclose. I find that she was not told that by LCF but was stalling.

959. She asked Mr Russell-Murphy about how to respond. Eventually, on 22 December 2015, Mr Russell-Murphy suggested that Ms Venn should obtain the figures from Mr Thomson. She emailed Mr Thomson the same day, saying:

> "Generally I have been trying to steer customers away from questions about our lending book however one particular chap is very persistent and wants me to answer the following question, can you please suggest a reply that you are comfortable with:
>
> What about telling me how much in total you have lent and what is the average sum per contract?"

960. Mr Thomson did not answer this question. Instead, he said he would "have a think" and email her something in the morning. He did not do this.

961. Mr Careless gave evidence that he discussed things daily with Ms Venn and it is probable that he discussed this problem with her. It was creating an obstacle to selling the investments; and it would clearly have been in LCF's interests to explain (at least) the number of borrowers and the average loan size. So, the failure to provide the information could not have been explained away as trivial or needless. Surge knew this.

962. I find that Mr Thomson's failure to provide even this basic information about its loan book was suspicious; and was a further reason for Surge to have serious concerns about the legitimacy of LCF's business. I find that Mr Careless in fact had such concerns.

End of 2015/early 2016

963. Mr Careless had a lunch meeting with Mr Golding scheduled for 29 December 2015.

964. On 28 December 2015 Mr Careless emailed his team (cc. Mr Russell-Murphy and Ms Baldock to say, "[w]e had a great end to 2015, bringing £1m into LCF in just 18 days (including two weekends!)".

965. Mr Partridge replied:

> "DD is obviously very important here in my eyes anyway … So you are seeing Spencer tomorrow. Do you want me there or is it a three wise monkeys meeting? I would not be offended btw but at some time we do have to address this issue."

966. Mr Partridge was pressing the need for due diligence. I find that this was because he had serious concerns by now about the legitimacy of LCF's business and that he had shared these with Mr Careless. The reference to the three wise monkeys was to the story of those who see, speak and hear no wrong.

967. Mr Careless was not sure if the meeting with Mr Golding would go ahead but he had been in touch with him because he replied to Mr Partridge on 28 December 2015 to say that Mr Golding "has offered £30m in security, first charge etc, let's take that this month, for starters covers us while we get to grips with the underlying asset and how it performs."

968. In his oral evidence, Mr Careless accepted that he understood from Mr Golding's willingness to provide security personally that he might control the borrower. Mr Careless also understood that Mr Golding exercised significant control over LCF.

969. I find that the fact that Mr Golding appeared to Mr Careless to be on both the lender side and the borrower side was a matter that merited investigation and gave rise to serious concerns about the legitimacy of LCF's business. This was particularly so in light of the representations that were being made to prospective investors about LCF lending to SMEs.

970. Mr Careless also accepted in his oral evidence that the security Mr Golding had offered did not remove the need for Surge to conduct due diligence and that Surge would not be able to continue to take 25% commissions legitimately unless it could "get to grips with the underlying asset and how it performs," even if the £30 million of security was provided.

971. On the same day, 28 December 2015, Mr Careless also emailed Mr Russell-Murphy, Mr Partridge, Ms Venn, Mr Jones and Ms Baldock to provide them with a link to a story in The Telegraph about a bond issuer called Wellesley, which they had been discussing by email. Mr Careless added:

> "JRM and I are meeting with Spencer on Tuesday mid-morning in Crowborough. I intend to bring Mark and use this article as a discussion point that if we had the recently referred to security in place, LCF would be in a far stronger place than Wellesley. If you scroll right down and read the comments, you'll see the

> obvious concerns we need to address, 'Peter Smythe' in particular nails it. Having £30m on the balance sheet would defeat that argument and conversions would increase."

972. Peter Smythe's comment was:

> "If you bothered to look properly at the 'savings bond' offering, you would see that they can basically do whatever they want with the money. The funds invested in the 'savings bond' will be used to 'expand its business' and 'lending capabilities' i.e. they can use the money for television adverts and raising even more money to do, basically, whatever they like with it. How does the FCA allow this stuff? These guys dangerously masquerade around as peer-to-peer lenders but all they are in reality is an unregulated fund that offers terrible returns … next scandal waiting to happen."

973. Mr Jones responded, "Interesting and timely article. I am sure they will be sniffing around LCF in no time at all".

974. Mr Careless replied, "No they won't. Wellesley got spotted because it went above the parapet by advertising on TV. They'll stay under the radar for a while yet".

975. In oral evidence, Mr Careless accepted the general proposition that if he had thought he was marketing a legitimate business, he would have wanted them to advertise on TV rather than staying under the parapet.

976. As regards LCF, however, he said that he did not want LCF to advertise on television because he did not want the FCA to conduct a review of LCF's marketing.

977. Had the FCA conducted such a review, it would have discovered, as Mr Careless knew, that LCF was not lending to a diversified portfolio of SMEs but rather to a single connected company (which itself was a land bank and which did not generate any profits).

978. Mr Careless said in evidence that he simply wanted to avoid any involvement from the FCA as it might have interfered with the business.

979. I find that Mr Careless's comment that Mr Smythe had "nailed it" shows that he understood by this date that LCF could be doing anything it liked with the bondholders' funds and that LCF might well be the next scandal. Mr Careless, Ms Venn and Mr Jones all thought that LCF might be doing the same thing as Wellesley was reported to have done. They had serious concerns about LCF's integrity.

980. I find also that Mr Careless generally thought that if anything went wrong with the FCA the buck would stop with LCF and its directors. It did not seriously occur to him that he or Surge might potentially be liable. This (and his drive to make more money) explains why he did so little to inquire into the reality of LCF's business.

Shifting position on capital gains tax allowances – Mr Partridge's email of 13 January 2016

981. In early January 2016 Mr Thomson told Surge that bondholders could use capital gains allowances (and that withholding tax would not be applicable) and that this had been

confirmed by BDO and Lewis Silkin. Mr Partridge expressed scepticism about this advice.

982. Mr Thomson then reversed his position and emailed Mr Russell-Murphy on 13 January 2016 to say that "all interest paid for the bonds is subject to withholding tax at 20%".

983. Mr Russell-Murphy emailed Surge's staff saying,

> "Just to clarify – all bonds will be subject to 20% withholding tax … Andy has also confirmed that their legal and accountancy advisers have stated that clients cannot utilise their capital gains allowance on maturity of the bonds".

984. Mr Careless forwarded this to Mr Partridge, who replied on 13 January 2016,

> "No fcking [sic] shit Sherlock … Sorry a bit rude but really! What happened to BDO and Lewis Silkin's advice?"

985. Mr Careless asked Mr Partridge what he meant by this. Mr Partridge explained the same day:

> "It is completely the opposite of what was stated last week when utilising your capital allowance was all the rage – alleged backed by BDO and Lewis Silkin. Despite my scepticism.
>
> That's why emails go out giving completely the wrong advice. Because people want to say the thing punters want to hear rather than reality.
>
> That's the sort of thing that ends up shutting the company down. Bullshit. You can't believe anything that comes out of Spencer's lot and so JRMs mouth. Diversify asap. And consider your sales management."

986. Mr Partridge was blunt. He told Mr Careless that Mr Thomson was not to be believed and that he made things up (told punters what they wanted to hear rather than reality). This was a serious message. Mr Partridge said that the potential consequence was that LCF would be shut down.

987. This email also shows that Mr Partridge also thought that Mr Thomson and Mr Russell-Murphy were part of Mr Golding's lot, i.e. that Mr Golding was ultimately running things.

988. In oral evidence, Mr Careless accepted that Mr Russell-Murphy was one of "Spencer's lot". He also accepted that Mr Partridge was advising him to get clients other than LCF and that he should consider parting company with Mr Russell-Murphy.

989. I find that this email represented the views of Mr Careless as well as those of Mr Partridge, that Mr Russell-Murphy was not truthful.

990. Mr Careless did not take these steps. Instead, he focused on trying to make LCF look more credible to members of the public by creating a lending page on LCF's website as

a sales tool in order to give a more convincing impression to prospective investors that LCF did actually lend to unconnected companies.

Growth in sales in 2016

991. In January 2016 Mr Careless sought another loan from Mr Golding, for £200,000. As with Mr Golding's previous loans, it was to be repaid by Surge reducing the commissions it charged to LCF. Again, I find that this shows that Mr Careless thought that Mr Golding was ultimately in charge of LCF. The reduction in commissions could not otherwise have repaid Mr Golding. Mr Careless planned for £50,000 of this money to be paid to Mr Careless personally, with £30,000 going to Mr Russell-Murphy, while the remaining £130,000 would be for Surge.

992. Surge's sales of LCF's bonds continued to grow. By February 2016, Mr Careless was hoping for "70 LCF leads a day starting tomorrow". The aim was for £1 million in commission revenues and £600,000 in profits.

993. In this period, as already explained, Mr Careless and Mr Russell-Murphy were discussing an exclusivity agreement with Mr Hume-Kendall and Mr Golding, which, in part, involved LCF. Mr Thomson was not involved in these discussions. Mr Careless did not want any discussion about it to be on email.

994. In April 2016 there were 196 applications by investors to purchase bonds totalling £3,441,700 and cleared funds of £2,080,500.

995. The number for May 2016 was cleared funds of c. £1.8 million. By the end of May 2016 Surge had raised almost £7.9 million for LCF.

996. In June 2016 Mr Careless set a new goal of £4 million per month.

997. Mr Russell-Murphy said,

> "my main focus will be to push LCF, this is our cash cow and I won't stop until the 4m target is hit."

998. Mr Careless told Mr Jones on 17 June 2016,

> "Dude, we are making a fucking fortune."

999. Ms Baldock emailed her colleagues on 22 July 2016 to say that (as a result of "rinsing every last client") the current total of bond collections for June 2016 applications stood at £2,995,800. Mr Careless replied, "That is good work. 3m is a solid number".

1000. Sales improved again in July 2016, with cleared funds of £4 million.

1001. August 2016 was another record month with cash of over £5 million.

1002. There was a dip in September 2016, but £5 million remained the target for October 2016.

Questions about security in January 2016

1003. Returning to events in January 2016, as explained above, Mr Careless had referred in an email of 28 December 2015 to getting "£30m on the balance sheet."

1004. After the meeting, on 2 January 2016, Mr Russell-Murphy emailed Mr Thomson, asking, "how are you progressing with the 30 Million land asset being placed into the company?" Hence, at that stage, the proposed security was going to be land.

1005. Ms Venn emailed Mr Careless on 6 January 2016 to say, "I am concerned that the targets might not be achieved without the £30mil security … Do we have a timeline for the enhanced security?"

1006. On 7 January 2016 Mr Partridge sent an email to Mr Careless in which he wrote "For DD purposes…". Attached was a picture of a board game called "Ponzi Scheme". In his oral evidence, Mr Careless said this showed Mr Partridge's dislike of the finance industry and his cynicism. He also said it was a joke.

1007. It was of course a joke. But, as Mr Careless accepted, people often joke about things that are real, that are difficult or uncomfortable. It was only humorous because it reflected a truth. The context of the email (they had been discussing due diligence) shows that Mr Partridge's joke was grounded in real concerns about LCF. He had shared these previously with Mr Careless.

1008. I find that Mr Careless believed by this stage that there was a real risk that LCF was a dishonest investment scheme of some kind.

1009. Mr Careless again suggested in evidence that he discounted Mr Partridge's views because he was always cynical. I have already addressed this theme. I find that he habitually trusted and relied on Mr Partridge's experience and opinions (see also the email of 14 January 2016 quoted in [1010] below). Moreover, as explained, Mr Careless himself was sceptical about the mini-bond industry.

1010. Mr Careless emailed Mr Barker (cc. Mr Russell-Murphy and Mr Partridge) on 14 January 2016, saying,

> "I need to get the security on the balance sheet as fast as possible. I also need to understand what exactly it is, as the Account Managers will need to explain it to the clients it needs to be simple. It will defeat our main objection and increase conversions immediately; therefore, it being added quickly will help increase sales.
>
> Secondly, I want to explore the opportunity laid out on Tuesday in our offices and I have asked Mark who is cc'd to liaise with you directly to get the ball rolling. Mark is a shareholder, friend and a Chartered Accountant and I trust him implicitly. If you require us to sign some form of Non-Disclosure, then that is fine. John and I are busy dealing with this growth and that is why Mark is conducting diligence on our behalf."

1011. The second passage shows that Mr Careless was looking to Mr Barker to advance the due diligence process. He was contacting Mr Barker as Mr Golding's proxy.

1012. Mr Careless again chased Mr Barker (cc. Mr Russell-Murphy, Ms Venn, and Mr Partridge) about the promised security on 18 January 2016, saying, "What is the update on this please? In particular, the security on the balance sheet". Mr Careless forwarded this email to Mr Jones; Mr Barker forwarded it to Mr Thomson.

1013. Mr Partridge emailed Mr Careless to say:

> "As per the literature LCF lend to 75% of asset value.
>
> We should consider this. Per our conversation with LCF, 50% of this asset is liquid. The rest is deferred 'consideration'.
>
> We need to consider whether to stop placing funds at £7.5m x 75% = £5.625m or £15m x 75% = £11.25m".

1014. Hence, there had been a change in what was being proposed as security. It was no longer a £30 million land asset. Instead, it was now to be an asset worth £15 million which was 50% "liquid" and 50% "deferred consideration".

1015. Mr Careless chased Mr Barker (cc. Mr Russell-Murphy, Mr Partridge and Ms Venn) on 21 January 2016:

> "What would help us significantly is removing the objection about the Company being young and having an empty balance sheet. The sooner the security is added the better. Can I ask you to let me know what the security will be precisely and when it will be added by in a way in which members of the public can see and our team can quote it."

1016. Mr Careless chased Mr Barker and Mr Thomson (cc. Mr Russell-Murphy, Mr Partridge and Ms Venn) again on 25 January 2016:

> "I am just following up on my email from Thursday to you both. Can I get a response this morning by email regarding the security which is being added to the company please. We are growing very quickly and the quality of the balance sheet needs to be shored up to provide comfort for the clients. It remains the largest, most singular objection and hold backs the conversions considerably. It requires your urgent attention."

1017. As noted above, an "objection" was Surge's shorthand for an investor's query.

1018. Again, it is notable that Mr Careless copied in Mr Barker. He associated Mr Barker (who was Mr Golding's right-hand man) with the efforts to obtain security.

1019. Mr Thomson replied on 25 January 2016 by saying that he wanted to discuss. However, Mr Careless was out of the office.

1020. I find that the changing description of the security and the fact that it had not been given caused Mr Careless further concerns about LCF's business and integrity.

Email of 25 January 2016

1021. Ms Venn spoke to Mr Thomson on 25 January 2016. She reported to Mr Careless, Mr Russell-Murphy, Mr Partridge and Mr Jones by email:

> "I have just spoken with Andrew Thompson [sic], we discussed some quite sensitive information which he initially didn't want to be communicated by email but has given me permission to relay this information assuming your commitment not to mention the details outside of this small group. Please don't even mention to the sales team yet until we decide how to communicate the key changes we have been asked to introduce.
>
> He has not replied to Marks request for DD because he did not receive the emails.
>
> There is no £30million security. There is a transaction taking place with $30mil (yes dollars) to the benefit of LC&F and inter related companies however the only 'asset' which they are able to use for the purposes of enhancing LC&F is a loan note for £15mil (yes sterling) in favor of LC&F. They have had it confirmed by their accountants that the loan note can be positioned in the balance sheet so that the assets of the company are boosted. The balance sheet currently shows assets of £6mil therefore an extra £15mil will take it to £21mil which is sizeable and therefore should assist sales but will not be as beneficial as the £30mil charge over property which was originally suggested. Andy says this was a miscommunication by Spencer and it was never an option.
>
> The loan book:
>
> - Since inception LC&F (formerly SAFE) has lent £4.2 million.
> - Currently there are 80 loans.
> - The average loan size is £75k
> - The largest loan ever was £220k
> - Terms range from 3 months bridging finance to 2 years property development finance.
> - Crucially all 80 loans are to Spencer related businesses i.e. they are funding their own operations.
> - I asked about the strategy for when they will open the opportunity to SMEs generally and he pushed the question back to me; 'when can you guarantee a consistent flow of funds? I turned down a £2mil loan last week because I didn't know if we could get £2m in this month'.
> - They have had no defaults since inception.
>
> Andy stated that he owns LC&F, he said: 'Spencer does not have ownership at all, I have a symbiotic relationship with Spencer we assist each other and we are vital to each other but he does

not own LC&F. Please stop communicating key information without me. In a meeting last week Paul communicated information about GCEN and your objections to how it works Simon Hume Kendal [sic], he is my customer and it is inappropriate for you to have disclosed the working of my business to him and also inappropriate not to include me in the meeting. I was not made aware of these issues with GCEN.'

I said: 'There has been a misunderstanding, we have been lead to believe that whilst you are officially the business owner as registered at companies house, Spencer is a driving force behind LC&F and a key decision maker. You really need to take this up with Spencer because he has presented himself to us as the big chief at LC&F and he invited Simon to the meeting, we believed we were talking candidly to trusted partners who had specifically been invited by the LC&F establishment'

He said: 'I will take it up for Spencer, just so you know, there is no side agreement / legal agreement behind the scenes, I own LC&F and Spencer does not. However, Spencer is very important to my operation and i will continue to have a good working relationship with him and him with me'

So you understand the tone, Andy wasn't really complaining or annoyed, he was just trying to express to me a frustration that he mustn't be left out because actually it's his business and he wanted to make it clear that if we think Spencer is a controlling partner / owner he is not. This is contrary to what we have been led [to] believe all along. I was surprised so I double checked, I said: 'Did you come up with the concept of SAFE, was at all your idea and you launched it as a startup?' Him: 'Yes others were involved but yes it's my concept and as of a few months ago I am a sole owner of this business'

I don't know what to believe?!? Is this a bit like if I said yes this is my business, nothing to do with Paul, check at companies house. Companies house would just show me but we all know Paul is the visionary and I just create systems to action the practicalities.

BIG ISSUE:

The FCA contacted Andy 10 days ago to say that they have received numerous complains re TIE promoting LC&F. They have also been forwarded email communications from TIE staff. They have mystery shopped us. In the FCAs opinion, we are miss-selling [sic]. It is not OK to state that bond holders capital is 100% safe, there are risks and we are no longer allowed to be so categorical in our statements. We have been operating in good faith but now Andy has alerted us to requested changes we can adapt as necessary.

> The FCA went on to state that the LC&F website constitutes a financial promotion in its own right and as it was not Section 21 approved they could shut it down. He promptly got Sentient to approve it and avoided this. He is now very cautious about new content and would like everything to go through a vetting process with sentient (via Andy) before release. This makes sense.
>
> Andy has had two hour long conversations with the FCA and is now implementing the necessary changes which will impact us. By close of business tomorrow, we will have a list of changes to make. The FCA will give us until the 1st February to implement these changes. He said we have to show the IM earlier in the process and make more of a feature of it.
>
> Andy will also write a list of statements that the sales team are using which need to be adjusted, it will take him a few days to complete this. Will be around how we communicate the 100% safe / secured message."

1022. I find that this email contained several alarming features:

    i. There were further changes to the proposed security. It was no longer to be over property but was over a loan note and it was for £15 million. There was still no clarity about it.

    ii. There was the "crucial" information about the loan book. There were said to be 80 loans, all to Mr Golding's businesses.

    iii. Ms Venn also said, "they are funding their own operations". In other words, she understood that Mr Golding and his associates were on both sides of the lending transactions ("they" and "their own" refer to the same group of people, related to Mr Golding).

1023. I have already addressed the passages about the ownership of LCF and concluded that the Surge Defendants did not know what to make of Mr Thomson's claims to be the sole owner, but that they continued to treat Mr Golding as having a controlling influence over LCF.

1024. As to the information about all the loans being made to Golding-related businesses, Mr Careless said in his witness statement that he knew that this was not a reference to 80 borrowers. Indeed, as noted above, Mr Thomson had explained in December 2015 that there were five borrowers and Ms Venn had speculated that these were all connected with Mr Golding.

1025. Moreover, in his oral evidence, Mr Careless said that "I had already worked that out, pretty much, fairly early on" (i.e. even before this email). That was at a time when he thought Mr Golding was the driving force behind LCF (and had not heard Mr Thomson's claims of sole ownership). Hence, he had worked out at an early stage that Mr Golding or his related businesses were on both sides of the lending relationship; and that his businesses were the only borrowers.

1026. The email also shows that, by this date, Mr Thomson had not responded to Mr Partridge's requests for due diligence about LCF and its assets. Mr Thomson's excuse was that he had not received Mr Partridge's emails. I find that everyone at Surge knew that was a very poor excuse.

1027. Mr Careless's main focus was on the final point in Ms Venn's email: that the FCA had "received numerous complains [sic] re TIE promoting LC&F" and had concluded that Surge was mis-selling. Mr Careless responded quickly. He emailed his colleagues (including Mr Russell-Murphy and Ms Baldock) on 25 January 2016 to say:

> "Something is coming our way … The dots are forming a line and we have too much to lose to not [take] action. Therefore: - "
>
> 1. Pause all TIE advertising
> 2. Pull TIE down, no pages live, have a page saying, "This site is currently offline." …
>
> It could be a competition or anyone, even someone who recently left. Some people when they are not allowed to play in goal, try and pop the ball. Either way, for now it closes.
>
> Lastly. All connections, IP, Limited Companies or people connected with TIE need considering or removing from all our other sites. Consider it toxic.
>
> Ashleigh and Ryan this is predominantly for you
>
> Report when completed. These actions may not stop what may come but it may help. It can always and easily relaunch. Nothing is forever."

1028. The site www.investment-experts-online.co.uk was immediately taken down.

1029. On 26 January 2016 Mr Careless emailed Mr Russell-Murphy, Mr Jones, Ms Venn and Ms Baldock, with the subject "TIE":

> "As you know I have brought TIE down. It is a pre-emptive move as I am expecting repercussions from the FCA regarding some of our dealings with clients. Where we go from here is not decided but to head off a potential issue of breaching the grey area of advice with at least one of our Analysts is paramount … Kerry – Please let me know what cross pollination is existing between TIE and other entities … Then we wait and see what happens".

1030. Ms Venn emailed everyone to tell them to remove any reference to TIE from LinkedIn.

Further requests for information about LCF's borrowers

1031. Mr Thomson had still not given Surge any testimonials from LCF's borrowers.

1032. On 29 January 2016 Ms Venn emailed Mr Careless, saying,

> "Missing piece of the 'is it a ponzi' jig saw: we need access to the lending book, inclusive of details re the security in place, what percentage is property and at what gearing, if not property what is it and how was it valued? Is Mark following up, I put him back in contact with Andy on Andys new email address."

1033. This email followed a discussion between Mr Careless and Ms Venn. This was four days after the 25 January meeting. The information in that email must have been fresh in their minds.

1034. Mr Careless agreed in his oral evidence that this was a serious email (not a joke), focused on what was needed for Surge to be satisfied that it could continue working for LCF.

1035. He also accepted that he had had discussions with both Ms Venn and Mr Partridge about the possibility that LCF might be a Ponzi scheme. He said that the reason for this was that they were working in an unregulated area where there was a lot of cynicism. He also suggested that the idea of a Ponzi scheme was an obsession of Mr Partridge. However, his email shows that it was something that he also discussed with Ms Venn and, as he accepted, it was a serious discussion, not mere banter. I find that this shows that Mr Careless, Ms Venn and Mr Partridge continued to have real concerns that LCF operating an investment fraud.

1036. In closing submissions, the Surge Defendants argued that Ms Venn would not have used the word "ponzi" if she had actually harboured any suspicions about LCF. I reject this. She used the term because she, Mr Careless and Mr Partridge indeed had real concerns that LCF might indeed be a Ponzi scheme. I find however that Mr Careless was willing to gamble that the buck would not come to rest with him if LCF collapsed. He wanted to maintain the commissions.

1037. The email also shows that Mr Careless knew what they needed to satisfy themselves: that is, further information about the loan book, and the security and how it was valued. As explained further below, this information was never in fact provided to Surge. Surge did not obtain access to information about the loan book; did not obtain details about the percentages of security which was in property; and did not see any property valuations. In short, the Surge Defendants thought at the time that they needed this information in order to address their concerns, but never obtained it.

1038. On 1 February 2016 Mr Partridge indeed asked Mr Careless if he should continue to "request DD information" from Mr Thomson. This shows that LCF had not yet provided sufficient information for Surge to be satisfied it was a legitimate business.

1039. At about this time, one of the largest ever investments into LCF bonds was being discussed with a potential investor. He was considering how to invest £1.25 million from a settlement sum received in respect of a life-changing injury to his daughter. Mr Russell-Murphy visited the investor at home to discuss it. Mr Careless said,

> "if JRM pulls off that 1m Friday then I'll be buying a 70k car with the comms the week after … Operation fuck you everyone who didn't believe."

1040. Mr Russell-Murphy was persuasive. The investment was made and £1.25 million was received through GCEN on 18 February 2016. Surge received £312,500 as commission on this transaction (as part of a payment of £370,000 received on 19 February 2016). The same day, Mr Careless used the commission on this transaction to pay a one-off bonus of £100,000 each for himself and Mr Russell-Murphy. Surge also paid £10,000 to Mr Golding's son, Lewis, with the reference "Careless JRM". Mr Careless sent a text message the same day saying, "Spencer payment done".

1041. More generally, Mr Careless was consumed by making as much money as possible as quickly as he could. He accepted in his evidence that he wanted to get rich; he wanted to make enough money over three to five years to leave with millions in the bank. I find that the drive to get rich quick was almost an obsession and it outweighed the necessity, which Mr Careless had identified, of pursuing difficult questions with Mr Thomson or Mr Golding. He knew that he ought to have been pursuing due diligence but was more focused on making money.

1042. He continued to set demanding sales targets for his team.

1043. Mr Careless also continued to progress the discussions about a proposed exclusivity agreement with Mr Hume-Kendall and Mr Golding (see [336] to [342] above).

Video produced in March 2016

1044. Surge produced and added a video to its website in March 2016. It included the following statements.

i. It explained that LCF was a leading provider of loans to UK businesses which typically charged borrowers between 12% and 20% per annum.

ii. It said that LCF had an experienced lending team which thoroughly assessed each application before agreeing to loan applications. All lending was said to be secured.

iii. It said, "[y]our investment is secured against our whole loan book, so as our loan book grows, so does the diversification of security; as an investor all of your funds are secured with no upper limit."

iv. It said, "[d]ue to our strict lending criteria, secured assets and the diversification, we have a 100% success rate in repaying investors in full along with their interest."

1045. This video remained on the website. There is an example of Mr Careless encouraging one of the sales team to use it in August 2016.

Further information in March and April 2016

1046. In early March 2016 Mr Partridge met Mr Thomson, who agreed to provide him with "the security documents held by LCF against the loans provided to date". Mr Thomson failed to provide these to Mr Partridge, who chased him on 1 April 2016, asking also to see a schedule of loans. Mr Partridge continued to recognise that this information was needed.

1047. On 1 April 2016 Mr Thomson apologised for the delay and said that he had been waiting for one particular document to become available. He referred to documents concerning

the Dominican Republic and said he would then send over a due diligence pack. He referred to loan agreements, valuations and security documents. On 1 April 2016 Mr Partridge replied, asking him to send over the documents currently available and the loans they pertained to. Mr Thomson did not send anything.

1048. Mr Partridge informed Mr Careless about his communications with Mr Thomson. Mr Careless therefore knew that Mr Thomson had mentioned having security over land in the Dominican Republic. This was the leisure and tourism business they had discussed in February 2015, and which Mr Careless and Ms Venn had thought would be considered too high-risk to be attractive to retail investors.

1049. On 8 April 2016 Mr Thomson told Mr Careless (cc. Mr Russell-Murphy and Ms Venn) that he had "instructed [his] solicitor to send Mark all the docs". Mr Lee sent an email saying, "I have not heard from your solicitor yet!" Mr Partridge was trying to obtain all LCF's security and loan documents from Mr Thomson. Mr Thomson told Mr Lee to send the security/loan documents they were holding.

1050. On 12 April 2016 Mr Lee sent Mr Partridge a facility agreement between L&TD, a corporate guarantee from London Group plc and a debenture supporting the facility agreement.

1051. This was strikingly limited information. It showed Mr Partridge and Mr Careless that LCF had only one borrower at this stage; and that Mr Golding and his associates were behind the borrower. Contrary to the representations in the Surge-produced video, there was therefore no diversification in the loan book.

1052. Mr Careless said in his evidence that he was at this stage comfortable that LCF had enough security. I do not accept this. I find that Surge lacked idea of the actual value of LCF's security, if indeed there was any. Surge had not been provided with the information listed in Ms Venn's email of 29 January 2015 (which included the underlying security documents and valuations). Moreover, Mr Thomson had by that stage given inconsistent and vague answers about the security. Surge had asked for more information because it had concerns about the legitimacy of LCF. Despite the absence of this basic information, Surge continued to market LCF's bonds and earn large commissions.

1053. I find that the paucity of the information provided by Mr Lee in response to Mr Partridge's requests was further reason for Surge to be concerned about the legitimacy of LCF. Mr Partridge had been seeking basic information about LCF since December 2015 and Surge would have expected a legitimate business to be able to provide it, more or less by return. The information sent by Mr Lee in April 2016 did not constitute what Surge had been seeking.

References to GST

1054. In marketing the bonds, the Surge salesforce referred to GST and its role.

1055. Mr Sedgwick controlled GST. LCF executed debentures in favour of GST which were filed with Companies House on 13 January 2016.

1056. Surge's sales team used GST's role to help them to sell LCF bonds.

1057. For example, Ms Baldock told prospective investors on 3 December 2015, "All bond holder funds are protected by an independent security trustee who manages the security held for the investor". Mr Russell-Murphy emailed prospective investors to tell them about the "third party" GST "who ensures there is always adequate security in place to protect the bondholders".

1058. A salesman at Surge told prospective investors on 13 June 2016,

> "An independent security trustee, Global Security Trustees Ltd, holds a charge over all LCF's assets (to include any new security LCF takes for additional loans made) which it holds on behalf of all bond holders."

1059. Similar statements were included in an LCF fact sheet, which Mr Russell-Murphy circulated to Surge's sales teams on 4 January 2016 and again on 14 January 2016,

> "These assets are then held in the form of a debenture by Global Security Trustee's, a third party company who ensures there is always adequate security in place to protect the bond holders."

1060. Mr Careless accepted that he knew that Surge's staff emphasised the independence of GST in their discussions with members of the public.

1061. There was a live chat function on LCF's website, staffed by Surge's sales team. The sales team also used this to tell prospective investors about the role of the independent trustee, among other things.

1062. Mr Careless and Ms Venn became concerned that GST had no online provenance or credibility. Ms Venn emailed Mr Thomson on 3 December 2015 to say,

> "Global Security Trustees Limited don't have a website, I believe they are a new company. This is something that the more research oriented / curious investors will pick up on. It will greatly assist our sales if they build a website so they have an online presence."

1063. This concern continued well into 2016.

1064. On 3 May 2016 Mr Careless, who was reviewing a webchat between an employee and a potential investor about GST, said that he would "chat with Andy on Thursday about setting up a good online trail of provenance to ensure when Googled it provides comfort."

1065. On 5 May 2016 Ms Baldock said in an email to Mr Thomson that it was embarrassing and unprofessional that they did not have enough information about GST.

1066. Mr Thomson replied on 6 May 2016. He was dismissive of Ms Baldock's message and seemed to have been angered by it. He said that Surge had enough information, essentially that "GST is a company set up by lawyers who have 120 years combined experience in this industry and have specifically set up GST to provide a vehicle to independently represent investor interests."

1067. This was not an adequate answer. Mr Thomson knew that Mr Sedgwick was working for the London Group companies, i.e. the borrowers, and that a key function of any security trustee would be to enforce security against the borrowers. There was an obvious conflict and GST could not independently represent the investors against the borrowers.

1068. Ms Venn was not satisfied with the information from Mr Thomson. She emailed Mr Careless on 7 May 2016 saying, "GST need a proper online presence. They play an important role yet anyone going [sic] DD won't find much about them and they are not FCA regulated". That important role included being in a position to enforce the security if LCF collapsed.

1069. Mr Careless reiterated this to Mr Thomson (bcc. Mr Partridge and others) on 7 May 2016. He said that he was writing "Off record". He said that GST needed a proper online presence as they played an important role. Due diligence would not reveal much, and they were not FCA regulated. He added that he was happy to set up the online provenance free, "so the issue disappears". He meant the issue of the lack of information about GST impeding bond sales. I find that in this email, he was expressing concerns about the sales angle, rather than the lack of independence of GST.

1070. Mr Partridge read the email chain and was concerned by Mr Thomson's statement about GST having been set up "to provide a vehicle to independently represent investor interests". He knew that GST was in fact connected with LCF and London Group in various ways. He emailed Mr Thomson (cc. Mr Careless and Mr Russell-Murphy) on 9 May 2016, saying:

> "Hi Andy
> Hope you are well. Just seen the trail below.
> There is a statement that GST are independent.
> Without casting aspersions or commenting on their magnitude there are a number of connections between LCF and GST.
> Whilst doing our DD we did note that:
> GST, LCF and LG (and subsidiaries etc) share the same registered office.
> The sole Director and shareholder of GST is also Company Secretary at LG and indeed most of LG's group.
> LG's group presumably owning the main UK asset as well as overseas assets upon which LCF is relying.
> As I am sure you are very aware."

1071. This spelt out for both Mr Thomson and Mr Careless that the statement that GST was independent was potentially misleading. There were connections between GST on the one hand, and both LCF and the London Group of companies on the other. Mr Partridge also noted in this email that the main overseas assets and UK asset were owned by London Group.

1072. After some evasion, Mr Careless accepted in his oral evidence that he understood that Mr Partridge was saying that the party which was supposed to be in charge of enforcing the security was connected with the borrowers in some way.

1073. Mr Careless also knew that his own staff were emphasising the independence of GST in their communications with potential investors. This was indeed the reason why Mr Careless was exercised about the lack of an online provenance.

1074. Following a call between Ms Venn and Mr Thomson on 18 May 2016, Ms Venn emailed Mr Careless, Mr Russell-Murphy and others to say that "GST will remain in place long term". She asked:

> "1. How will we represent what they do to advantage sales when we can no longer claim they manage the security on behalf of the investor on a day to day basis?
>
> 2. How can we build them an online provenance when they are effectively a one or two solicitor firm without a track record? This is further exacerbated by the fact that the main solicitor is standing down due to a conflict of interest".

1075. The issues in respect of GST remained unresolved.

1076. I find that Mr Careless knew that GST was connected with the borrowing companies (against which it would have to enforce the security if LCF failed). Mr Careless knew that this meant that the statement that GST was independent was misleading (this was the point made by Mr Partridge in his email of 9 May 2016). He also knew that his staff were continuing to emphasise the independence of GST. Mr Careless did nothing about this, but allowed his staff to continue to represent to investors that GST was independent. I find that he was again single-mindedly focused on maximising commission revenues, and that this outweighed the obvious need to ensure that the bondholders were not being misled.

Mr Partridge's connections analysis

1077. In response to Mr Partridge's comment in his email of 9 May 2016 about the connections between LCF and GST, Mr Russell-Murphy emailed Mr Partridge (cc. Mr Careless) saying, "Any other linked directorships etc would be useful".

1078. Mr Partridge responded on 9 May 2016 by providing Mr Careless and Mr Russell-Murphy with a colour-coded spreadsheet identifying connections between LCF and various companies including GST, London Group plc, L&TD, London Trading, LCCL, Waterside Villages and CV Resorts, as well as various other companies connected with Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Sedgwick. He also identified overlapping officers and shareholders (including Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Sedgwick).

1079. Mr Partridge had collected this information from Companies House. He had not been provided with any further information by LCF, Mr Thomson or Mr Golding. Mr Careless knew this.

1080. The information obtained by Mr Partridge (and recorded in his spreadsheet) suggested that the value in the group of companies lay with London Group plc. Mr Partridge and Mr Careless knew that that company had given a guarantee to LCF, but had not granted

security. L&TD, which had granted the debenture in favour of LCF, was shown in the spreadsheet as having no assets of any value on its balance sheet.

1081. Mr Careless already knew before this email that the borrowing businesses were connected with Mr Golding, Mr Hume-Kendall, Mr Sedgwick and Mr Thomson. This email gave more details. One of the data points in the spreadsheet was that Mr Thomson was shown at Companies House as the holder of 5% of the shares in London Group plc, the company shown to have the most value (net assets of £35.8 million). Hence the Surge Defendants knew from the email that Mr Thomson was interested as a shareholder in the London Group.

1082. Mr Partridge referred in an email to Mr Careless on 17 May 2016 to pressing Mr Thomson for a signed debenture and referred to the "complete lack of security".

1083. Mr Careless said in evidence that he was not aware of the problem over security. He also said that he did not understand the difference between a guarantee and security. I cannot accept this. He knew that Mr Partridge had been pressing for a debenture.

1084. To recap, by this stage:

i. Mr Careless, Mr Russell-Murphy and Ms Venn knew that the loans so far made by LCF had been made to only a small number of companies. Mr Careless understood from Mr Thomson that although he had referred to "80 loans" did not mean that there were 80 borrowers. He knew they were all to "Spencer related businesses".

ii. Mr Careless therefore knew that Mr Thomson was referring to drawdowns rather than borrowers.

iii. Mr Partridge had now identified LCF's borrowers (and the relevant connections) in the colour-coded spreadsheet.

iv. Mr Careless therefore also knew that there was no or very limited diversification of LCF's loan book.

1085. Mr Careless did not react to this information by pausing the sales of bonds or otherwise. On 10 May 2016, immediately after receiving the colour-coded spreadsheet, Mr Careless sent an email setting out objectives for his team. The top priority was, "LCF to £4m – deadline – 30 days | new fucking brochures, new API, Savings Nest live, leads increased to 150 per day and new Ams".

1086. In his oral evidence, he regretted the language, but had no answer to the suggestion that his primary focus was raising money for LCF as quickly as possible. He reprised the theme of Mr Partridge's cynicism. I have already found that, in fact, Mr Careless relied on Mr Partridge as a trusted adviser. I find that Mr Careless pursued material gain single-mindedly.

Mr Thomson's answers to the FAQs prepared by Surge

1087. The sales team at Surge were not party to the efforts to undertake due diligence and the additional information that had been given by Mr Thomson. In her long email of 25 January 2016, Ms Venn had explained that Mr Thomson did not want the information about the identity of the borrowers and the nature of the security to be given to the sales

team yet. As a result, the sales team continued marketing the bonds on the basis that LCF was carrying on business as a lender to the UK SME sector, that GST was an independent security trustee, and that there was a diversified lending portfolio.

1088. This led to the sales team raising issues, as bondholders wanted to know the answers to some obvious questions, which came up frequently.

1089. One of the Surge sales team, Ms Finney, compiled a list of frequently asked questions, which included the following key questions for Mr Thomson:

> "LENDING: HOW MANY CLIENTS HAVE WE LENT TO? WHO DO WE LEND TO? AVERAGE LOAN SIZE?"; "ASSETS: WHAT ARE THE ASSETS HELD? WHAT IS THEIR VALUE? WHERE CAN I FIND THIS INFORMATION".

1090. Ms Finney sent this to Ms Baldock on 12 May 2016, attached to an email entitled "Questions for Andy".

1091. On 13 May 2016 Ms Baldock sent these to Mr Thomson (cc. Mr Russell-Murphy, Mr Careless and Ms Venn), attached to an email with the subject, "Common Questions". She explained that she had "now spoken with the account managers and we have complied a list of frequently asked questions".

1092. Mr Careless forwarded this to Mr Partridge, who replied, "I'd like to see the answers!!!". He had been seeking this (and other) information from Mr Thomson since December 2015, without success.

1093. Mr Careless seems to have been anxious about the idea of letting prospective investors ask too many questions about LCF. On 17 May 2016 when a prospective bondholder asked Mr Barnard (one of Surge's sales team) a question about Mr Thomson's role within LCF, Mr Careless sent an email advising Christopher Barnard not to answer it: "I'm going to jump in here. I don't think it's a good idea to let prospective investors dictate questions to us. What's next? What is Andy's star sign. I think the key is to not let the customer or prospect dictate the terms so easily".

1094. As already noted, on 17 May 2016 Mr Partridge asked Mr Careless if he could push Mr Thomson further "on his complete lack of security." Mr Careless replied, "Re AT – let's wait to see his response to Jo's email before we make our next move. I am also Jedi Knighting him on Thursday so need him the right side of happy." I find that Mr Careless did not want to upset Mr Thomson.

1095. On 18 May 2016 Ms Venn reported to the others that Mr Thomson had "agreed to send us his answers to the questions Jo sent through last week".

1096. On the same day, Mr Thomson drafted his answers to the frequently asked questions, and sent it to Surge. This included (the answers being in lower case):

> "GST
> WHO ARE THEY?

Global Security Trustees have been set up buy a group of experienced solicitors, each with in excess of 30 years practice history, to provide security trustee services to corporate bond providers.
In 2015 a gap in the market was identified for a security trustee to the corporate bond industry when one of GST's principles was advising on a new bond issue …

WHAT DO THEY DO FOR THE CLIENT NOW AND IN THE EVENT OF LCF FAILING
When a bond is set up GST review the structure and contractually bind themselves, via a trust deed, to ensure bondholder interests are protected if LCF fails. ... If LCF fails GST, via its charge over LCF steps in immediately to ensure investor interests are protected …

WHY IS THERE NO ONLINE PRESENCE OR LITERATURE
Due to the size of the gap in the marketplace for a service of this type GST do not need to advertise a significant volume of introductions from financial industry professionals.

LENDING
HOW MANY CLIENTS HAVE WE LENT TO?
As at the beginning of May 2016 LCF has made 121 loans
WHO DO WE LEND TO, WHAT SECTOR?
LCF lends to all sectors.
AVERAGE LOAN SIZE?
The total size of the loan book at the beginning of May 2016 is £9,055,096.11, this drives an average loan size of c.£75,000
WHY IS THERE NO MENTION OF HOW TO MAKE A LENDING APPLICATION, THERE IS NO FACE TO THIS SIDE OF THE BUSINESS OR CONTACT NUMBER ETC?
LCF uses a network of professional introducers to source lending opportunities and as such does not need to advertise.

ASSETS
WHAT ARE THE ASSETS HELD AND UNDERLYING SECURITY?
The assets LCF currently hold as security is a mixture of property, land, contractual obligations, shares, warrant’s and corporate guarantees from listed company’s.
WHAT IS THEIR VALUE?
The current value (borrowing directors confirmed updated valuations as at the end of April 2016) of the assets pledged as security against LCF’s loan book is c. £62,000,000 (£14m floating charge contractual value, £17.5m property & £34.5m development land). The security taken against these assets is a mixture of corporate guarantees & fixed and floating charges.

WHERE CAN I FIND THIS INFORMATION

This is not published information at this time but will be published in the next set of audited accounts".

1097. As Mr Thomson knew, these answers were misleading:

i. GST was presented as a trustee business, which had been set up to service bond issues. The impression was that it would act for other bond issues. In fact, it was owned by Mr Sedgwick and had no function other than for LCF. It had no online presence because it had no wider business.

ii. The answer to the question about the number of clients was false and deceptive. LCF had in fact entered loan agreements with a small group of borrowers, all with companies associated with the First to Fourth Defendants or Mr Golding personally. Mr Thomson referred to the number of "loans" rather than the number of "clients", but anyone reading the question and answer would have understood there to have been 121 borrowers. But even in Mr Thomson's own terms the answer was untrue as there had been 121 drawdowns, not loans.

iii. Mr Thomson accepted in his oral evidence that this answer was misleading. He also accepted that it was "an answer crafted to give an impression", though he denied that it was crafted to give a false impression. I find that that the drafting was indeed crafted to give a false impression.

iv. There had not been lending to "all sectors". By this date there had been loans to LOG and the various entities holding land (or contractual rights over land) in Cornwall and the Dominican Republic.

v. The answer about average loan size was misleading. It was based on the number of drawdowns rather than the number of borrowers. Anyone reading the document would have supposed that borrowers were on average borrowing £75,000. That gave the false impression that there had been broad diversification.

vi. LCF did not use a network of professional introducers to source lending opportunities. All of the lending was to the First to Fourth Defendants' businesses or Mr Golding personally. This answer (together with the earlier ones about the number of clients and lending to all sectors) gave (and was intended to give) the false impression that LCF was a commercial arm's length lending business.

1098. Mr Thomson's answers were obviously inconsistent with information that he had previously provided to Mr Careless, Mr Russell-Murphy, Ms Venn, Mr Jones and Mr Partridge on a confidential basis in January 2016. This group knew that:

i. There were only a few borrowers (all Golding-related) and a very small number of loans.

ii. Hence, LCF was not lending to all sectors. There was actually lending to a few connected businesses.

iii. The reference to a network of professional advisers was therefore false.

iv. The figure given by Mr Thomson for average loan size was misleading. It suggested diversification when in reality there was concentration in a small associated group of borrowers.

v. GST had been set up by Mr Sedgwick who was company secretary for the London Group. Mr Partridge's spreadsheet, shared with the others, showed that Mr Sedgwick was the sole shareholder and director, and that there were no filed accounts showing any trading activity.

1099. Ms Baldock forwarded Mr Thomson's answers to Mr Careless, who forwarded them to Mr Partridge. He responded, "Just the usual bs I'm afraid".

1100. Mr Russell-Murphy also forwarded Mr Thomson's answers to Mr Careless, who replied, "Grrrr".

1101. Counsel for the Surge Defendants submitted in closing that the statement that about the number of loans was strictly true. I reject this. It is clear from the context that the query was about the number of loans, not the number of drawdowns. There was no reason why members of the public would have been interested in the number of drawdowns (which was completely irrelevant to them), and every reason why they would want to know the number of borrowers.

1102. The submission was indeed at odds with Mr Careless's evidence.

i. Mr Careless accepted in his oral evidence that he knew that when Mr Thomson said that LCF had made 121 loans, he did not mean that LCF had 121 borrowers.

ii. Mr Careless accepted in oral evidence that Mr Thomson's answer in the document gave a misleading impression. He then sought to blame Mr Huisamen. But eventually he agreed it was misleading.

1103. Mr Careless said, however, that once they had discovered that there was a small number of borrowers Surge corrected what they said to members of the public about this. I am unable to accept this evidence.

i. As already explained, Mr Careless accepted that he had realised from an early stage that all the borrowers were associated with Mr Golding. It is probable that he realised this fact from about the time Surge started to raise funds. In any event, Mr Careless accepted that he knew that there was only a handful of borrowers before the date of the email of 25 January 2016.

ii. But Mr Careless did not take any immediate steps to prevent the Surge sales team informing potential investors about lending to multiple borrowers in the SME sector. Even on his own evidence, this continued some months afterwards.

iii. Surge in fact continued for much longer than that to tell members of the public that there were multiple borrowers in the SME sector.

iv. Surge's sales force in fact used the figure of 121 borrowers given in Mr Thomson's Q&A. For instance: (a) in an email of 1 June 2016 to an investor Ms Baldock used the Q&As about the 121 borrowers and the average loan size; and (b) in a webchat

on 29 June 2016 (sent to Mr Careless by email), the salesman said that LCF had approximately 120 loans out with SMEs with 250 employees or less.

v. Mr Careless continued after May 2016 to encourage the sales team to use the video which referred to the loan book growing and diversification.

vi. In a post on Money Savings Expert in July 2017 (see para [1290] below), the authors said that the sales team had stated that there were approximately 120 SME borrowers. Though they said that the figures for the levels of lending were out of date by a few months, this is consistent with the fact that the sales team had continued to refer to the numbers of borrowers.

vii. A transcript of a call on 8 December 2017 records a member of Surge's sales team telling a potential investor that LCF lent to hundreds of different companies.

viii. Later, after the publication (in February 2018) of the accounts to 30 April 2017 (which disclosed that there had been eleven borrowers in 2017 and five in 2016):

(a) Members of the sales team asked, "How many companies do we currently lend to? We were told ~150 companies in June 2017".

(b) Ms Baldock said in an email of 20 February 2018 that the sales team had been quoting lending to hundreds of clients.

(c) There is no reason to think that these contemporaneous documents were inaccurate. They are supported by the transcript of the call of 8 December 2017.

ix. This is confirmed by Ms Venn's email of 21 February 2018 in which she said that account managers were still using information provided by Mr Thomson in May 2016, including that there were 121 loans and that the average loan size was £75,000.

1104. I also find that the reason Mr Careless gave this evidence (which I have rejected) is that he appreciated its serious implications, i.e., that Surge had continued making statements to prospective bondholders which he knew to be false.

1105. Mr Careless also said in evidence that Surge was only a marketing company, and that the sales force were reading from a script, which had been approved by Mr Thomson and Mr Huisamen. He appeared to think that this was an adequate answer to the allegation that Surge was prepared to mislead members of the public. I disagree. Mr Careless knew that Surge's sales team, LCF's sales channel, was giving potential investors misleading information about the numbers of borrowers, average loan size, diversification of the loan book and the characteristics of the borrowers.

1106. Mr Careless was, as already explained, intensely acquisitive. He said in emails that all he cared about was cash and that he had a determination to succeed and get rich. I find that he comforted himself with the belief that if LCF collapsed, legal and regulatory accountability would fall on LCF and its directors, and would not reach Surge or himself. The collapse of LCF would remove the cash cow but that would be all. Mr Careless was indifferent about misleading the public; he did not care either way. He wanted to

maximise his take. He deliberately did nothing to ask further questions about the gulf between LCF's self-portrayal of its business and what he knew to be the true position.

1107. I also find that Mr Careless (and others involved with Surge) knew that Mr Thomson had deliberately given a false impression about LCF's borrowers in the Q&As. Mr Partridge called it the "usual bs" i.e. not only was it bullshit but bullshit had become normal. I find that Mr Careless's answer ("Grrr") shows that he thought the same thing. Mr Partridge had already described Mr Thomson (and "Spencer's lot") as liars before this.

1108. On 1 July 2016 Mr Thomson told Mr Russell-Murphy that LCF held security valued at £35 million and its loan book was £15 million. These figures were different from those provided by Mr Thomson on 18 May 2016; the loan book had increased very substantially, and the value of the security had fallen. Mr Thomson told Mr Russell-Murphy that these figures should now be used. Mr Careless did not react to this.

Payments by Surge to Mr Thomson's company, Media GPS

1109. From June 2016 Surge made a series of monthly payments to Media GPS, Mr Thomson's company. These continued until September 2017. The invoices from Media GPS were described as for "professional services".

1110. Mr Careless understood the calculation of the amounts in the invoices. Mr Thomson's company was paid 0.5% of LCF's cash receipts from new bondholders in the previous month (equivalent to 2% of Surge's commission). Mr Careless approved the invoices and sent them to Mr Jones for payment.

1111. In total, Surge paid Mr Thomson more than £400,000 under these invoices. The bank statements for Media GPS show that it generally made a substantial onward payment to Mr Thomson personally from the amounts received from Surge.

1112. Not everyone at Surge thought this was a good idea. Mr Jones said in an email of 7 July 2017 that "We are mad paying him". However, Mr Careless continued to approve the payments.

1113. The last payment was of the September 2017 invoice. On 9 October 2017 Mr Thomson provided Mr Careless with an invoice (invoice #00117) from Media GPS to Surge for "professional services" in the sum of £38,870. This was not paid. The arrangement involving the payment of 0.5% of gross bondholder investments to Mr Thomson was to be replaced by a new arrangement involving the payment of 1% of bondholder investments to Mr Golding (see further below).

1114. The Claimants pleaded that these payments were misappropriations of LCF funds.

1115. Mr Thomson and the Surge Defendants contended that they were commercially justified payments, made for professional services. The Claimants contended that they were a form of secret commission (i.e., a bribe or kickback) to Mr Thomson to induce him to continue paying the 25% commission to Surge.

1116. Mr Thomson said in evidence that he was carrying out work for Surge on what they did for Blackmore and that he was also "upskilling" Surge's back-office. He said he was not only working with Blackmore directly but was also working with Surge's back-office to

improve what they did and their processes. He said, "I was working with them on other fundraisings that didn't derive any income or funding. So, the only way we could recognise that, in terms of a metric, was what was coming through the door". He said that part of the reason for the payment being based on LCF's sales was that he was upskilling Surge as well as helping Blackmore.

1117. Mr Careless said in evidence that Mr Thomson was paid a percentage of LCF's revenue for work conducted for Blackmore.

1118. In closing, Counsel for the Surge Defendants relied on an email of 23 May 2016 from Mr Careless to Mr Thomson and Mr McCreesh (cc. Ms Venn). In it, Mr Careless referred to Mr Thomson coming on board with Surge at a much deeper level. He said that he had asked Mr Thomson to consult for him. He said that he wanted comfort that Mr Thomson would consult on the new bond and that Surge would meet the cost.

1119. I reject the evidence of Mr Thomson and Mr Careless.

i. The suggested arrangement makes no commercial sense. Mr Thomson said that it was not related to LCF. But there is no credible reason for Surge to have paid Mr Thomson a fee measured by a percentage of the funds raised by Surge for LCF, rather than an hourly rate or a day rate, or even a percentage of funds raised by Surge for Blackmore. It is no answer to say that Blackmore was not making an income at that time – the obvious way of remunerating Mr Thomson would have been to pay him on a time basis or from income when it came to be generated.

ii. Mr Thomson's account of the work he supposedly did for Blackmore was vague and unspecific.

iii. Even if Mr Thomson had conducted work for Blackmore, there is no reason why the payments should have continued for as long as they did. Indeed, on Mr Thomson's evidence he would have continued to have been entitled to 0.5% of LCF's receipts indefinitely.

iv. The payments abruptly came to an end because of a new arrangement for Surge to make monthly payments to Mr Golding instead (see below). Nobody suggested that that replacement arrangement had anything to do with work for Blackmore. If Mr Thomson had had a genuine commercial arrangement with Surge, there would have been no reason for them to cease at this stage. Surge would (on Mr Thomson's evidence) have had to pay both sets of fees.

v. Like Mr Thomson, Mr Careless could not explain why, if the work had been done for Blackmore, he would have agreed to pay Mr Thomson a percentage of Surge's receipts from LCF's investors. His attempts to do so were incoherent.

vi. Mr Jones, who was a trusted colleague of Mr Careless, thought they were mad to pay Mr Thomson. He was not aware of any proper commercial basis for the payments.

vii. Mr Careless suggested that he had been impressed by Mr Thomson's ability to engage professionals like PwC and Lewis Silkin and thought that he could introduce them to Blackmore. This was altogether unconvincing. He could have

asked Mr Thomson for contact details or even an introduction, but would hardly have been willing to pay 2% of Surge's fees indefinitely (amounting in the event to some £400,000) for doing this.

viii. Mr Careless disagreed with Mr Thomson's evidence that Mr Thomson had been involved in upskilling Surge's staff. There is no documentary evidence of Mr Thomson doing anything to improve Surge's back-office and Mr Thomson was unable to explain what he had done, beyond repeating vague generalities.

ix. There is no evidence of any arrangement with Blackmore for the reimbursement of any of the payments, once Blackmore had itself started to make income as a result.

x. Mr Careless's evidence has changed since the answers he gave to the Administrators in the course of a private examination in 2020. At that point, he said that there had been a written agreement with Blackmore. He now accepted that there was no such agreement. Indeed, on his current evidence Blackmore was not obliged to pay anything.

xi. When asked about how much he had paid Mr Thomson, Mr Careless said he could not remember. He did not mention the arrangement for 0.5% of LCF's monthly sales (and the administrators did not at that stage have copies of the invoices). He suggested that the consultancy arrangement had been entered at Blackmore's request. There is no documentary evidence of that happening. He said there had been invoices from Surge passing on Mr Thomson's fees to Blackmore. There are none. I find that he was seeking to put the administrators off the scent. But what he said then was also revealing, as Mr Careless realised that it makes little sense that Mr Thomson's fee (supposedly working for Blackmore) should have been paid by Surge with no recourse to Blackmore.

xii. Mr Careless referred several times in oral evidence to the email dated 23 May 2016 and said that it supported the existence of the arrangement. I find that this email gives no support to Mr Careless's case: it referred to the possibility of Mr Thomson working as a consultant for Surge, not for Blackmore. Mr Careless's oral evidence was that Mr Thomson had consulted for Blackmore and that the payments were not for work done for Surge itself. In the email, Mr Careless said that he wanted the comfort of Mr Thomson consulting on a new bond (involving a pensions company called Westbury). It appears that this new bond was never actually launched, so the consultancy fee cannot have been paid in respect of this proposal. Moreover, there would have been no commercial sense, if Mr Thomson had somehow consulted on this bond, to receive a fee relating to sales of the LCF bonds.

xiii. I find that the Surge Defendants have latched on to the references to consulting in this email after the event, but that the 0.5% fee in fact paid to Mr Thomson had nothing to do with the proposed arrangements referred to in the email.

xiv. Mr Careless gave evidence that Mr Thomson was always threatening to reduce the commission payable to Surge. As already explained, Mr Careless recognised that Surge's commercial success was due to the 25% fee originally agreed by Mr Russell-Murphy. Mr Careless had every incentive to seek to maintain it.

xv. In assessing the explanation given by Mr Thomson and Mr Careless, I also take account of their explanation of the replacement arrangement under which payments came to be made to Mr Golding. As explained below, I have concluded that the later, replacement, arrangement was a secret commission paid to Mr Golding to maintain the level of Surge's fee at 25%. This is further support for the view that the earlier one had a similar character.

xvi. The contemporaneous documents show the likely seeds of the idea of a 0.5% fee. On 12 April 2016, on a visit to a nightclub in London, Mr Careless and Mr Russell-Murphy introduced Mr Thomson to Mr McCreesh. Mr Thomson and Mr McCreesh discussed the possibility of a joint venture to launch a bond for a pension company called Westbury. Mr Careless suggested that Mr Thomson should work for Surge in a consultancy role in connection with the new bond. The proposed joint bond was never actually launched. In the meantime, Mr McCreesh was hoping that LCF might be able to help to provide £1 million per month in funding for some other projects. On 24 May 2016, he explained to Mr Careless that he was going to make a proposal to Mr Thomson involving 6.5% per annum to LCF and "0.5% to him". Mr Careless said that this looked good. Shortly afterwards, Mr McCreesh emailed Mr Thomson (bcc. Mr Careless) making this proposal. Mr Careless sent the email to Mr Russell-Murphy, Mr Jones and Ms Venn. She thought that interest of 6.5% would make it uneconomic for LCF. She was right. However, it is likely that this planted the idea of 0.5% for Mr Thomson personally. Mr Thomson sent the first Media GPS invoice to Surge on 4 June 2016 for 0.5% of LCF receipts from bondholders the previous month.

xvii. The Surge Defendants relied on three emails from April 2016 and said that these showed Mr Careless conducting work for Blackmore. However, the context shows that they concerned the possible launch of the Westbury bond. That was going to involve both Blackmore and LCF. It was a short-lived proposal and it was never actually launched. These emails do not show Mr Careless conducting consultancy work for Blackmore. Nor do they evidence Mr Thomson advising Blackmore about becoming more professional or how to make an application to the regulator or anything related to those matters. Rather, they relate to the Westbury venture in which both Blackmore and LCF appear to have been potentially interested. In any case, this limited, abortive, work cannot conceivably have been the basis for a continuing consultancy fee (calculated by reference to sales by LCF on its own bonds) which lasted for more than a year. Moreover, these emails pre-date the email of 23 May 2016, which I have addressed above.

xviii. Counsel for the Surge Defendants also referred in closing to two emails from July 2016 which appear to show that Mr Thomson may have agreed to review a draft Blackmore IM. This is an exiguous basis for the alleged consultancy arrangement under which he was being paid tens of thousands of pounds a month. It is possible that Mr Thomson was willing to do this as a favour. It was not explored in the evidence with either Mr Thomson or Mr Careless.

xix. The Surge Defendants submitted that the fact that LCF continued to pay 25% after the payments to Mr Thomson stopped shows that those payments cannot have been a backhander or sweetener. They said this was the acid test. I am unable to accept this. At the same time as the payments to Mr Thomson ceased, the new arrangement with Mr Golding started. I find that the new arrangement replaced the earlier one.

As explained above, Mr Golding had ultimate control of LCF and directed Mr Thomson in relation to its business.

1120. For these reasons, I reject Mr Thomson and Mr Careless's case that the monthly payments were a commercially justified consultancy fee and find that their evidence about this was deliberately false. I find that the payments were a secret commission paid to Mr Thomson to induce LCF to maintain the level of Surge's fees at 25%.

Timing of LCF's accounts

1121. Members of the public frequently asked Surge's sales team about LCF's accounts. By mid-2016 the most recent accounts were for the period ended 30 April 2015. They disclosed net assets of £40,944.

1122. Surge's sales team told investors that LCF's accounts for the subsequent year, to 30 April 2016, would show a far stronger position. Mr Thomson said initially that they "would be submitted late April and available early May".

1123. On 19 April 2016 Mr Thomson said that the accounts had been delayed to June.

1124. Mr Allen, one of Surge's sales team, emailed Mr Careless and Mr Russell-Murphy and explained that he had a potential investor who wanted to see the accounts before investing and that they were in danger of losing credibility.

1125. Mr Thomson told Mr Careless that the company accounts would be completed in May and the audited accounts would be available in June.

1126. This did not happen. Investors continued to ask about them. On 18 July 2016 Mr Russell-Murphy asked Mr Thomson for an update.

1127. Mr Thomson replied the same day to Mr Russell-Murphy (cc. Mr Careless),

> "The position with the accounts is that we are having to wait for guidance from HMRC re a technical point on how to represent the balance sheet. PWC and our accountants are chasing HMRC on a regular basis but I cannot give you a timescale. As soon as the accounts are finalised, I will let you know".

1128. Mr Russell-Murphy replied to Mr Thomson (cc. Mr Careless) the same day, "Guidance on a technical point should come from PWC, the HMRC accept the accounts anyway you present???".

1129. Mr Thomson replied the same day,

> "With respect I don't want to go through the detail [with] you, you will just have to accept the position as is and that I am doing what is right for my company".

1130. Mr Careless emailed Mr Thomson saying that this was a "Good reply". He appeared to wish to keep on the right side of Mr Thomson, even when Mr Russell-Murphy had raised a fair point.

1131. Mr Russell-Murphy however replied to Mr Thomson (cc. Mr Careless):

> "The problem I have is back in April you addressed the account management team and said the accounts would be finalised at the end of April and would be available shortly thereafter. The AM's passed this information on to investors who enquired about the bond.
>
> You then said in May the accounts were being finalised and would be available that month. You then said the account would be available in June and so on.
>
> I have to manage the AM's [sc. account managers] expectations, they are the ones on the front line dealing with clients on a daily basis. Why don't you share with me the real position, that way we can set realistic timescales and deal with AM's and clients accordingly".

1132. Mr Careless forwarded the email chain to Ms Venn, who replied, "Oh dear". Again, they did not want to upset Mr Thomson by asking questions.

1133. Mr Careless also forwarded the email chain to Mr Partridge, presumably to see if he could shed any light on Mr Thomson's comment about "having to wait for guidance from HMRC re a technical point on how to represent the balance sheet".

1134. Mr Partridge said in an email of 18 July 2016,

> "This is almost certainly crap. HMRC do not give opinion unless there is uncertainty with regard to the law i.e. tax law.
> This would appear to be accounting treatment and so not likely to get an opinion. And anyway HMRC are interested in the P&L, rarely are they interested in the balance sheet unless someone is hiding profits there – that isn't something you would ask HMRC's opinion on…
>
> PWC would know this – I am not so sure what PWC have to do with this anyway."

1135. Mr Careless forwarded Mr Partridge's email to Mr Russell-Murphy.

1136. Mr Careless said in his oral evidence that he would have accepted Mr Partridge's view that Mr Thomson was speaking "crap" on this issue. Mr Careless then edited Mr Partridge's email, amending the first line to "I know you won't want to hear this, but this is almost certainly untrue" and adding a final line which read, "These accounts are long overdue and the excuse holds no water can we talk in the morning". He then sent it to Mr Thomson under cover of an email in which he wrote "it would help me if you could give me a steer on when we could get the accounts please". Mr Careless accepted in his oral evidence that his amendments to Mr Partridge's email reflected his own views.

1137. This was another case of Mr Partridge telling Mr Careless that Mr Thomson was inventing excuses, which were empty. It confirmed their existing view that Mr Thomson was not to be trusted.

1138. Mr Careless repeated during his evidence that Mr Thomson was a difficult man with low people skills. He said he was misogynistic and did not get on with Ms Venn. Ms Venn said much the same in her evidence. There is no reason to doubt any of that. But some of their evidence seemed to me to be designed to suggest that while there were personality clashes that was as far as it went. I do not accept this. It is clear from the documents already recorded (and others) that Mr Careless and others at Surge did not trust Mr Thomson to tell them the truth. By this stage in the history, they thought he just invented excuses.

Email of 22 July 2016

1139. On 22 July 2016 Ms Eaves of LCF emailed Ms Baldock (cc. Mr Jones) to say that LCF would pay the remainder of Surge's invoices for commissions on the following day, because LCF had "hit our limit on our bank account to send payments, hence why they are being paid tomorrow". Mr Jones forwarded this to Mr Careless, commenting, "Ha, love that!". Mr Careless asked him, "What's their limit?". Mr Jones replied, "No idea. Would include payments to spencer etc as well, not just our comms".

1140. The Claimants submitted that the phrase "payments to spencer etc" referred to personal payments which LCF made on 22 July 2016: being £51,250 to Mr Golding, £33,750 to Mrs Hume-Kendall, £7,500 to Mr Barker and £7,500 to Mr Thomson, funded by a payment of £246,500 from LCF to L&TD. The Claimants noted that though there were 21 business days in June 2016, there were only 6 days on which LCF funded payments to Mr Golding, Mr Hume-Kendall, Mr Barker and/or Mr Thomson. They say that Mr Jones's remark is unlikely to have been a coincidence.

1141. Mr Careless's evidence was that Mr Jones was using the term "spencer etc" as a shorthand way of referring to companies controlled by Mr Golding and Mr Hume-Kendall.

1142. I accept Mr Careless's evidence on this point. Mr Jones and Mr Careless did not have the means to know whether LCF was making payments to the First to Fourth Defendants. Though Mr Jones said "spencer etc", that could have been shorthand for his businesses. I am not satisfied that Mr Careless was aware from this email alone that LCF was making payments to the First to Fourth Defendants personally, rather than to businesses connected with them.

1143. However, on his own evidence about the email, Mr Careless believed in July 2016 that LCF's funds were being used to fund businesses associated with Mr Golding. For reasons already given, he also thought that Mr Golding had ultimate control over LCF.

1144. When it was put in cross-examination that this meant that LCF bonds were being sold to the public in a seriously misleading way, Mr Careless referred to the two sets of audited accounts (those audited by PwC and EY), and meetings at the offices Goldman Sachs with Mr Hume-Kendall and others about a potential oil bond. It appeared that Mr Careless was seeking to explain that he thought the business was substantial and legitimate. I give this evidence limited weight.

1145. First, neither of the relevant audited accounts had been published by July 2016 and there had been no meetings with Goldman Sachs by that date. The answer was a formulaic refrain and was not an answer to the question.

1146. Second, in any event, none of these points (even if chronologically accurate) would have justified Surge's role in selling bonds by presenting a misleading impression about LCF's business.

The lead up to the 2016 accounts

1147. Prospective bondholders continued to ask for information about the number of LCF's borrowers, and their names. Surge's sales team were told to say that they could not disclose names of borrowers due to data protection laws. But, as already explained, they did represent that LCF had a large number of borrowers.

1148. The absence of recent accounts also continued to hinder the sales effort.

1149. On 2 August 2016 Mr Russell-Murphy emailed Mr Thomson (cc. Mr Careless) to ask for an update. On 5 September 2016 Mr Russell-Murphy emailed Mr Barker again to complain about this, explaining that it was holding up sales.

1150. On 13 September 2016 Mr Newman-Jones received LCF's draft accounts for the year ended 30 April 2016 and forwarded them to Mr Russell-Murphy, who forwarded them to Surge's sales team. They disclosed a profit of £148,550. This was modest compared to Surge, which was now in the process of making an annual post tax profit of £2.4 million.

1151. LCF's draft accounts also disclosed net assets of £7,226 as at 30 April 2016. They contained a statement in the strategic report that LCF held security over assets worth £60,752,482. There was no other information about those assets in the draft auditor's report.

Was there a written contract between LCF and Surge?

1152. This episode is conveniently addressed here because the existence of the agreement became a sticking point for PwC's audit of the April 2016 accounts.

1153. Although LCF paid 25% of all sums received from bondholders to Surge, there was no signed contract between them.

1154. The Surge Defendants admitted this in their Defence.

1155. Mr Thomson contended that there was a signed contract bearing the signature of Ms Venn (then Ms Graham). The Claimants and the Surge Defendants say that this was forged on 7 October 2016 to deceive LCF's auditors, PwC.

1156. The history starts on 27 July 2015, when Ms Venn emailed Mr Thomson saying, "We need to put an introducer agreement in place between Surge Financial Limited and London Capital and Finance Limited, do you have a standard agreement we can review?".

1157. On 3 August 2015 Ms Venn emailed Mr Thomson to remind him that "we still need … an introducer agreement". Mr Thomson prepared a draft agreement which provided (in

schedule 1) for the payment of such fees and charges as may be agreed from time to time between the parties. He sent it to Ms Venn, adding, "let me know what you think".

1158. Ms Venn sent it to Mr Careless and Mr Russell-Murphy, asking, "Are you both happy for me to sign?". Mr Careless replied, "I'm happy. Control the tap, control the bath!". Mr Jones was also happy with it.

1159. Ms Venn did not sign the draft agreement, because the schedule referred only to "such fees and charges as may be agreed from time to time between the parties" and failed to record the agreement about the payment of 25% commissions.

1160. Ms Venn asked Mr Thomson to provide a new schedule. He did not do this. Ms Venn told Mr Thomson in an email on 24 August 2015,

> "We haven't signed the introducer agreement contract, you were going to attach an appendix which would itemise the commissions owed then send it back to me for review. As we are now selling and cash has been received for the first couple of clients and a lot of pipeline should close this week, it would be prudent to put this in place".

1161. On 25 August 2015 Mr Careless told Ms Venn that she should ensure that a contract was in place and that this was urgent. She replied to Mr Careless, "Re the contract with LCF, the Body of the contract is fine, but Andy is writing an appendix to it which confirms our commission at 25% and I should have that today".

1162. On 25 August 2015 Mr Thomson sent a draft distribution agreement to Ms Venn. In this version, Appendix A provided: "A Commission of 25% of funds raised is payable to the distributer [sic] when funds are cleared into the Principles [sic] bank account".

1163. Ms Venn signed and returned it to Mr Thomson on 28 August 2015. The version she signed had been backdated to 3 August 2015, in typescript on the front page.

1164. Mr Thomson did not sign it.

1165. On 10 September 2015 Mr Jones sent an email to Ms Venn asking, "Do you have a copy of the Surge agreement with LCF?" She replied, "Andy has not returned a copy to me with his signature as yet. I have chased".

1166. On 15 September 2015 Ms Venn chased Mr Thomson for a signed copy of the agreement. Mr Careless asked Mr Jones to ensure that the agreement between LCF and Surge was signed by Mr Thomson.

1167. Mr Thomson did not sign it. On 14 October 2015 Ms Venn again chased Mr Thomson for a signed copy.

1168. Ms Venn's agenda for a meeting with Mr Thomson and Mr Golding on 15 October 2015 (which she sent to Mr Careless on 14 October 2015) included, "Andrew signature on Introducer Agreement. I requested he bring a hard copy today as this is now very overdue and I sent to him originally on 28th August". Mr Thomson still did not sign it.

1169. Nothing happened for almost a year.

1170. In September 2016 PwC was auditing LCF's accounts for the period ended 30 April 2016. On 28 September 2016 PwC asked Mr Thomson for a copy of the contract between LCF and Surge.

1171. The version signed by Ms Venn on 28 August 2015 (and never signed by Mr Thomson) was out of date. It referred to London Capital & Finance Limited, but LCF had since become a plc. It gave LCF's former registered office address, rather than to the current one. It also referred to LCF issuing loan notes, rather than bonds. The definition of "Services" referred narrowly to making introductions between LCF and prospective bondholders but did not mention the other services that Surge was providing to LCF, such as the provision of marketing services, the creation and maintenance of LCF's website, the conduct of online marketing services and the development and maintenance of a cloud-based client management portal including application procedures and investor accounts.

1172. Mr Thomson therefore prepared a further draft. This updated version reflected the fact that LCF had become a plc with a new registered office address. It referred to bonds, rather than only to loan notes. It included a new definition of the term "Services" to include the provision of marketing services, the creation and maintenance of LCF's website and the conduct of online marketing services and the development and maintenance of a cloud-based client management portal including application procedures and investor accounts. Appendix A now referred to a "fee" (rather than a "commission").

1173. Mr Thomson sent this updated version of the agreement to Ms Venn on 28 September 2016.

1174. She forwarded it to Mr Careless on the same day, explaining:

> "Andy has asked me to sign a contract between LCF and Surge (attached).
>
> He wants this signed today because his auditors need it.
>
> I promised to review today and if all is well to sign it. I haven't read it yet, I have some urgent things to do first, I might not look at until after 4pm. I will read it later in the afternoon and come back to you with my comments.
>
> Please also review for your own reassurance. This is potentially a very sensitive issue and we should look at how liability will fall before signing. We need to make sure we are not unduly exposed if LCF are investigated or if they go bust."

1175. Ms Venn was therefore concerned about potential liability in the event of LCF going bust.

1176. Mr Careless asked her to forward this to Mr Jones and Mr Partridge, which she did.

1177. Ms Venn told Mr Thomson (cc. Mr Careless and Mr Russell-Murphy), "Sorry I know you really need this signed ASAP for your audit but I do have to run it by our solicitor. I will find out how quickly it can be turned around and get back to you".

1178. Mr Thomson emailed Mr Careless about this a few minutes later, saying, "As discussed, please find attached the agreement that was agreed but not signed last year, its [sic] fairly basic but covers the basis. I have [tweaked] one section to add the provision of the online support you give us and the dashboard Ashleigh created".

1179. Mr Careless discussed the position with Ms Venn, who said, "[it] would be prudent to have our solicitor review. I won't sign until I have that confirmation. Andy needs this ASAP so I will get it fast tracked. Let's hope I can get it approved by tomorrow".

1180. Mr Careless asked, "Can we just sign this? It's to help him".

1181. Mr Careless said in evidence that "[t]he reason I was keen to get the audit is, all of the cynicism that you see as suspicion, it would have cleared it up". I shall return to this theme of the evidence below. But I note here Mr Careless's evidence that there was continuing cynicism or suspicion about LCF.

1182. Ms Venn replied, "Sorry, I don't mean to be difficult, I would help him if I could but I believe the more important issue here is to have this reviewed by a solicitor". Mr Careless said, "Yes, that's fine … I'll let him know …".

1183. This delay caused problems for Mr Thomson with PwC, who wanted to see the signed agreement.

1184. PwC asked Mr Thomson to bring the signed agreement to their offices at 9.00am on 29 September 2016.

1185. On 30 September 2016 Mr Thomson emailed Ms Venn, saying, "I really needed it yesterday morning, not having it has created additional work and has prompted PWC looking into us in more detail. We have nothing to hide but this will add more time to the production of [the accounts]".

1186. Mr Thomson then sent a further text message to Ms Venn on 30 September 2016 saying,

> "You have completely missed the point of why I needed it, this was the contract we agreed last year, I thought it would be a simple request to simply sign it. I need Surges support to get the audit concluded and it didn't happen and has knock on issues. As you are wanting to go down the solicitor route I will forward your revisions to Lewis Silkin who will [no] doubt advise me that LCF needs a far more robust contract to protect its position …".

1187. Ms Venn replied, saying, "I'm not signing a contract that a solicitor hasn't reviewed. Let's get it right first time".

1188. The auditors put more pressure on Mr Thomson, and he decided to approach Mr Careless instead. Mr Thomson emailed Mr Careless on 30 September 2016 to say that he had made only a few changes to the agreement which were all minor and that the new agreement was "practically identical" to the one that Ms Venn had previously signed. Mr Thomson sought to persuade Mr Careless that legal input was unnecessary. Mr Thomson also told Mr Careless that "if we don't have an agreement in place" by Monday, PwC would have to "put a qualification in the audit regarding the robustness of LCF as a going concern as it does not have an agreement in place with a business critical supplier".

1189. Mr Careless forwarded this to Ms Venn, Mr Jones, and Mr Russell-Murphy. Ms Venn emailed Mr Careless, Mr Jones and Mr Russell-Murphy saying,

> "All he has to do is call me. I will explain why I want the clauses he added in, removed and why. I do want further revision re clause 5. Nothing unreasonable. He's really making a meal of this. A quick call would resolve / at least put him in the loop.
> Also I'm shocked that he would send a contract where the liability re FCA is a big exposure and expect me not to get a solicitor to review?!? Sending Wednesday afternoon and getting a response Friday morning is good. He should be thanking us for the fast turnaround. He shouldn't be criticising the decision not to sign when he hasn't even asked why we won't sign.
>
> We have good reasons and I would love to tell him about them if he would answer my calls and not just cancel them and send me abusive text messages."

1190. Mr Partridge was also involved. He emailed Mr Careless to say,

> "He just talks out of his arse. The original agreement is fine the other one is fundamentally different. If he wants to pay vat on top of the commission, he can sign the new one.
> Or just re-sign the original agreement if [it's] so close."

1191. Mr Careless accepted in evidence that he understood Mr Partridge was saying that Mr Thomson was lying.

1192. Mr Careless forwarded Mr Partridge's email to Mr Russell-Murphy, Ms Venn and Mr Jones. The latter replied to Mr Careless, "Kerry already signed and returned the original doc over a year ago, he has that already!"

1193. Mr Partridge's comment about LCF having to pay "vat on top of the commission" if the new agreement was signed reflected Surge's concern about the definition of "Services". Surge's position was that introduction commissions were not subject to VAT and its invoices to LCF did not include VAT. The comment related to the prospect of Surge agreeing in writing to the provision of services (such as marketing services, the creation and maintenance of LCF's website and the conduct of online marketing services, and the development and maintenance of a cloud-based client management portal including application procedures and investor accounts) which would be subject to VAT.

1194. Ms Venn and Surge's solicitor, Mr Kinch of SDK Law, prepared a further draft of the agreement. They changed the definition of "Services" so that it again referred solely to the making of introductions between LCF and prospective bondholders, without mentioning any other services. They changed the terminology throughout to refer to Surge as "the Intermediary", rather than "the Distributor". They amended clause 5 to dilute and qualify Surge's obligations in respect of compliance with anti-money laundering legislation. They added new obligations of LCF in what was now clause 6, by requiring LCF to help Surge to comply with FCA Rules. They amended the provisions for the exclusion of liability in clause 8. The draft was still dated 2015 in typescript on the front page.

1195. On 2 October 2016 Ms Venn sent this to Mr Thomson (cc. Mr Careless and Mr Russell-Murphy) saying,

> "I attach the amended contract for you to review. All changes are done as tracked changes so you will be able to easily identify the requested variations. Recognising that this is time critical, I also attached a signed version so you have this in place to use at your meeting on Monday".

1196. The attached draft contract still bore the date 2015 in typescript. The fact that the agreement was to be backdated did not cause concern to anyone at Surge. I find that they were prepared to go along with the proposed backdating, though they knew that PwC were pressing for the agreement as part of the audit.

1197. On 3 October 2016 Mr Thomson sent this draft to Mr Lee of Buss Murton.

1198. On 4 October 2016 Mr Thomson emailed Mr Lee, saying, "How are you getting on with the Surge agreement, I'm being pushed by PWC for it".

1199. Ms Miller of PwC emailed him on 5 October 2016 to ask,

> "Would it be possible for you to arrange for a scan of the Surge Financial contract to be emailed to me today / tomorrow, this was the one document that you didn't have when we met last week. We have had one of our final quality reviews of the audit and we need this to be documented on our file".

1200. Mr Thomson replied, "I completely forgot! I'm out of the office at the moment but I'll try to have a copy scanned over, if not I can do it first thing tomorrow morning". This was a lie: there was no such agreement to scan over.

1201. Mr Lee prepared a heavily marked-up version of the draft agreement. He deleted much of the new wording in clause 5, stating that an obligation on the part of Surge to "take all reasonable steps" could not be agreed by LCF ("They either act in compliance or they don't. Taking reasonable steps is not a defence to any allegation by the FCA"). He introduced a new clause 6 which (inter alia) required Surge to maintain professional indemnity insurance for not less than five million pounds for twelve years. He amended the clause dealing with LCF's obligation to help Surge to comply with FCA Rules (which

had been clause 6 and was now clause 7). He amended the exclusion of liability which had been clause 8 and was now clause 9.

1202. At 4.01pm on 5 October 2016 Mr Lee sent his mark-up to Mr Thomson. Mr Thomson forwarded this to Ms Venn, adding, "The immediate issue is I have been able to put off PWC until now, but they are expecting a doc first thing tomorrow, they have completed the accounts but won't release until they have a scan of the agreement".

1203. Ms Venn reviewed the mark-up and told Mr Thomson by email that Mr Lee had made some helpful revisions. She said that Surge did not have insurance at the level required by the new insurance clause. She highlighted the comment in the mark-up about acting in compliance with anti-money laundering regulations and the prospect of liability for this. She suggested that the clause might "need re-writing from scratch as might be easier than amending now, what does Alex think? Can we agree the sentiment together and get your solicitor to propose the re-work?". She provided some bullet points containing what she thought should be covered by the clause.

1204. On 6 October 2016 Mr Thomson forwarded Ms Venn's email to Mr Lee, who replied with his thoughts on the compliance and liability issues. He concluded, "Perhaps I have missed something but it seems that Surge are trying to say that they do not want to take the requisite responsibility for the work you are asking them to undertake. In which case I am struggling to advise you that such a contract is ok to enter into".

1205. Mr Thomson forwarded Mr Lee's email to Ms Venn.

1206. Mr Thomson then emailed PWC, saying, "Sorry not to have sent the surge doc over … I'm on my way back now and will get it sorted later today". This was another lie. No such document existed.

1207. PwC replied, "That would be great if we can get it today".

1208. At 3.48pm on 6 October 2016, Mr Lee sent an email to Mr Thomson attaching "the clean version of what I sent over yesterday".

1209. Ms Venn emailed Mr Thomson about the new clause 6 to ask whether the insurance cover had to be for 12 years. Mr Thomson provided her with Mr Lee's clean copy. Ms Venn said she would review it.

1210. By this stage, PwC had finished the audit and were preparing a final version of LCF's accounts. But they still needed to see the signed agreement between LCF and Surge and would not sign off LCF's accounts without it.

1211. On 7 October 2016 Mr Thomson sent an email to Mr Miller of PwC with the subject "Surge agreement": "I finally got back to the office this morning (it's been an entertaining week!!!) and have scanned in the agreement below".

1212. The attachment was an agreement between LCF and Surge dated on its face 3 August 2015, purportedly signed by Mr Thomson on behalf of LCF and "Kerry Graham" on behalf of Surge. This was the in the same terms as the version that Mr Lee had sent to

Mr Thomson at 3.48pm on 6 October 2016 containing (for example) the new clause 6 on insurance.

1213. Ms Venn's evidence was that she never signed this agreement and that her signature was forged.

1214. The email record above shows that on 6 October 2016 she was still reviewing the draft and asking questions about it.

1215. The signature purporting to be Ms Venn's on the agreement scanned to PwC is materially the same as appearing on the previous version of the agreement which Ms Venn had signed and returned to Mr Thomson on 28 August 2015.

1216. There is later correspondence which would make no sense if Ms Venn had signed the new agreement.

1217. On 26 October 2016 Mr Thomson emailed Ms Venn to say, "I havnt [sic] heard anything from you on the proposed agreement I sent over a couple of weeks ago? do you have any questions or are you happy to agree it". Ms Venn responded, "Re the contract. This has been parked for a while to allow our accountant to investigate the VAT issue. I will chase for an update."

1218. Mr Thomson replied the same day,

> "Appreciate you need to speak to your advisors but its been weeks now and I haven't heard anything and we don't have any agreement in place. I was put in an extremely difficult position with PWC over it which had the potential to damage everything, this needs resolving sooner rather than later. Can you please chase your advisors and advise of the urgency".

1219. On 28 October 2016 Ms Venn told Mr Partridge (cc. Mr Careless), "Andy is back pushing us over the contract issue … [We] do need to once and for all establish the VAT situation so that we can finalise a contract".

1220. On 3 November 2016 Ms Venn emailed Mr Partridge again (cc. Mr Careless) saying, "Andy is chasing me to complete the contract". She asked Mr Partridge if he had made "any progress with establishing if we are VAT exempt". Mr Careless reiterated that it needed to be finalised.

1221. Mr Partridge told Ms Venn (cc. Mr Careless), "[t]his really isn't something that can be rushed as it is crucial and arcane … BTW LCF accounts have been filed so he cannot use the auditor requirement on us".

1222. Hence, Mr Careless and Ms Venn understood that Mr Thomson had found some way of satisfying PwC that there was a written agreement in place between LCF and Surge. They did not know how he had done this.

1223. On 11 November 2016 Ms Venn chased Mr Partridge again about this. Mr Partridge said he understood her frustration, but he wanted to wait until they had obtained tax advice from Macfarlanes.

1224. On 21 November 2016 Ms Venn's "to do" list continued to include this issue ("Must get to bottom of VAT issue to complete contract with LCF!").

1225. Ms Venn chased Mr Partridge again the same day, saying,

> "Luckily Andy hasn't been chasing me this week but it's been two months since this issue first arose and I do feel we ought to resolve now. It benefits all parties if we have an adequate contract in place".

1226. On 13 January 2017 Mr Partridge asked for the "latest draft contract with LCF". Macfarlanes wanted to see it in order to advise on the VAT position.

1227. On 16 January 2017 Mr Partridge chased Ms Venn, adding, "Macfarlanes are now chasing me for the introducers agreement as is so that we can discuss VAT".

1228. She replied (cc. Mr Careless) on 17 January 2017 saying,

> "Agreements aside, we want to know if Surge is VAT exempt or not? Even if we never sign an agreement with LCF we need to know this … I have previously emailed you … a one page summary of all of the activities that Surge does. The activity list is perhaps more useful as it was to be used to establish if the blend of activities made us exempt or not".

1229. On 1 June 2017 Ms Venn emailed Mr Careless to say that Mr Thomson was "keen to get a contract in place before his next audit". However, the issue was not resolved. Ms Venn's "to do" list a few days later still included this item in paragraph 3. Mr Careless advised her, "The LCF contract needs to be in second spot please".

1230. Mr Careless emailed Ms Venn, Mr Partridge, Mr Jones and Mr Russell-Murphy on 27 June 2017 to say, "I want Andy to have signed a Surge/LCF contract. Kerry, can you forward what we have with salient points as soon as you can. Everyone needs to check it before Kerry gets a clean copy over to Andy to sign". Ms Venn circulated a draft contract; Mr Russell-Murphy and Mr Partridge provided her with their comments.

1231. On 30 June 2017 Macfarlanes provided Ms Venn with an entirely new draft agreement between LCF and Surge. They had re-written it. The new draft agreement was entitled, "Services agreement". It was a very lengthy agreement. Schedule 1 provided that LCF would pay "a marketing fee equal to 25% of each investment". Schedule 2 contained a lengthy description of "Services". Clause 8.1 of Schedule 2 provided, "The Customer hereby grants the Service Provider the exclusive right to market, advertise and promote Bonds to Investors during the Term".

1232. Ms Venn emailed this to Mr Thomson, saying, "Some good news, long overdue but I do now have a services agreement for your review and signature. I have been conscious that

we were not able to get this in place before your audit last year and have now made sure this is ready well in time of your next audit". Mr Thomson replied, "I note that it is a completely new agreement so I will have to send it to our solicitors at Lewis Silkin to look through". He sent it to Lewis Silkin.

1233. On 5 July 2017 Mr Reid of Lewis Silkin emailed Mr Thomson, "In summary this is not an agreement you can sign not least as you would be encouraging and acquiescing in Surge Financial Limited ("Surge") (a party not regulated by the FCA) to carry out FCA regulated activities (a criminal activity)".

1234. Mr Thomson forwarded this email to Ms Venn. She forwarded it to Mr Careless (cc. Mr Russell-Murphy), adding, "Rather than amend our contract, Andy has received advice to reject it. See this detailed explanation from Lewis Silkin. I fear a stand-off. If they made suggestions for revisions, we have the starting point for a negotiation. This is just a flat out obstruction". Mr Careless seems to have suggested that Lewis Silkin should prepare a re-draft.

1235. Lewis Silkin began to prepare a new version.

1236. On 25 July 2017 Ms Venn emailed Mr Thomson asking, "[i]s there any progress with regards to a contract? I am wondering is [sic] Lewis Silkin have had a chance to draft this please?" Eventually, on 3 August 2017, Mr Thomson was able to provide Ms Venn and Mr Careless with Lewis Silkin's re-draft. They had cut down the definition of "Services" in Schedule 2.

1237. Ms Venn replied to Mr Thomson (cc. Mr Careless) to say that the "sticking point is going to be around the Services i.e. Schedule 2. I assume you have scaled this back for regulatory reasons?" She attached a document which contained the terms of the Schedule 2 drafted by Macfarlanes. She asked if Lewis Silkin could "highlight any clauses that could compromise your regulation".

1238. On 23 August 2017 Ms Venn re-sent this document to Mr Thomson (cc. Mr Careless and Mr Russell-Murphy). Mr Russell-Murphy then emailed Ms Venn and Mr Careless to say, "I think we should be harder with Andy on the points raised … Paul and I can discuss this with Spencer on Tuesday and get him to squeeze Andy if required". Ms Venn accepted that one option would be to "get Spencer to make him accept the Services section as it is" but was concerned that this could cause regulatory problems for LCF. Mr Russell-Murphy and Ms Venn agreed that the latter would attend a forthcoming meeting with Mr Golding to discuss "the service review part" with him.

1239. This again supports the conclusion that Mr Russell-Murphy and Ms Venn thought that Mr Golding still had the ultimate power of decision over LCF.

1240. The issue of the contract was never resolved. As to this:

i. On 29 August 2017 Mr Reid of Lewis Silkin emailed his colleague, Owen Watkins, to say that he might need his input in respect of Ms Venn's document (containing the terms from Macfarlanes' Schedule 2), commenting that Lewis Silkin's view "was that much of this was not something that the service provider should be doing not least as they are not regulated".

ii. On 29 August 2017 Mr Reid advised Mr Thomson that Macfarlanes' draft was seriously defective.

iii. Ms Venn and Mr Thomson initially agreed that Lewis Silkin and Macfarlanes should "work through the redraft together". By 11 September 2017, however, Ms Venn had become concerned that this would probably be "quite an expensive way to go about it" and that it would therefore be preferable for Lewis Silkin simply to set out their concerns.

iv. On 2 October 2017 Mr Reid emailed Chris Mortimer of Macfarlanes to explain that Surge "should not be 'bringing the deal together' which was what we are all agreed is the regulated activity". The problem seemed to be that Ms Venn and Macfarlanes were keen for the contract to set out what Surge was doing, but Lewis Silkin held to the view that Surge should not be doing those things because it involved "carrying out regulated activities while not regulated (a criminal offence)".

v. Ms Venn explained the problem to Mr Thomson (cc. Mr Careless and Mr Russell-Murphy) on 22 February 2018: "The services section has been pretty much deleted so that they state that we only do web hosting, web development and assisting people to go through the online sign up process. We deliberately gave a detailed list of services which is what we need to be in the contract to prove the blend of services we provide make us VAT exempt. We have been told that the list we provided made Lewes [sic] Silkin uncomfortable on the basis that it could be argued some are regulated activities and Surge is not regulated."

vi. No resolution was reached, and no contract was signed.

1241. Returning to the version sent to PwC on 7 October 2016, Mr Thomson gave evidence that the signed version of the contract was sent to him by email that day (or the evening before) by someone at Surge and that he then sent this to PwC.

1242. He maintained this position under cross-examination. I am unable to accept his evidence.

i. The email correspondence set out in detail above shows that the draft was still being considered by Ms Venn and Surge (and its lawyers) at the time he sent the apparently signed version to PwC.

ii. Mr Thomson said that the signed agreement had been sent to him electronically. There is no email or other document in the disclosure of either Surge or LCF showing a signed agreement being sent from Surge to LCF. There has been extensive disclosure and the existence or otherwise of the agreement was one of the issues for disclosure. Mr Thomson was unable to explain the absence of any document showing the delivery of the signed version to him.

iii. I have explained that Mr Thomson's evidence is generally to be treated extremely cautiously unless supported by the documents. I found his evidence on this issue to be evasive and incoherent.

iv. I preferred the oral evidence of Ms Venn that she did not sign the agreement and did not know of anyone else doing it.

v. Ms Venn's evidence was supported by the contemporaneous and subsequent email traffic.

vi. It is inherently unlikely that anyone else within Surge would have forged Ms Venn's signature and sent it to Mr Thomson without telling Ms Venn. Ms Venn was the person tasked with communicating with Mr Thomson about the draft, and the person who had been communicating with Surge's own lawyers.

vii. Moreover, if anyone else at Surge had forged Ms Venn's signature behind her back, they would have realised that this fact might well emerge, with serious consequences. Though Mr Careless was in charge of Surge, he had a close working relationship with Ms Venn, and he would not have forged her signature.

viii. The purported signature on the scanned version given to PwC is identical with that on the version sent by Ms Venn in 2015. It would have been easy for Mr Thomson to copy the signature and attach it to a scanned version.

ix. Mr Thomson was under extreme pressure to complete the audit. He knew that PwC would not sign the audit report without the contract, and he was frustrated with Ms Venn. He had tried to go behind her back to Mr Careless but that had not worked.

x. As already noted, Mr Thomson lied to PwC twice about the agreement even before sending them the apparently signed version. He gave the impression that he had forgotten to scan it over to them, when he knew it did not even exist (in a form he was happy with). It was a small step from these lies for him then to give the auditors a version he had forged.

xi. I have found elsewhere that Mr Thomson has lied many times, historically and in his evidence to the court, and has fabricated documents. Scanning the false contract to PwC to get them off his back is consistent with his conduct and character.

xii. Moreover, the version Mr Thomson gave to PwC was dated 3 August 2015. Even ignoring the signature, this was misleading. As Mr Thomson knew, the agreement had only just been drafted and discussed by the parties. It was different from the version that Ms Venn had signed in August 2015 (and the changes were, as Mr Thomson knew, the reason why Surge was not willing to sign the new one). I find that the version of the agreement he gave to PwC was deliberately backdated to mislead the auditors. This itself was dishonest.

xiii. The correspondence after 7 October 2016 undermines Mr Thomson's evidence. I have set it out in detail above. Discussions about the drafting continued. Indeed, Mr Thomson himself asked whether there had been progress on it. Neither he nor anyone at Surge said that the agreement had already been signed.

1243. I conclude that Mr Thomson deliberately lied to the court about this episode. He forged Ms Venn's signature on the backdated agreement and knowingly misled PwC so that the audit report could be released.

10 October 2016: LCF's accounts for the year ended 30 April 2016

1244. On 10 October 2016, LCF produced accounts for the year ended 30 April 2016. The auditors were PwC.

1245. The strategic report, signed by Mr Thomson, explained that the company's principal activities during the period continued to be the raising of funding through the issuance of private bonds and lending the proceeds to medium sized businesses on a fully secured basis. It stated that during the year there had been bond additions of £9,269,143 and bond redemptions of £664,463. It stated that there were secured assets of £60,752,483 and that the notional value of loans as at 30 April 2016 was £9,396,814, a ratio of 15%. It stated that company policies were aimed at minimising credit risks by requiring that loans only be made with customers who demonstrated an appropriate payment history and satisfied creditworthiness procedures.

1246. The directors' report, signed by Mr Thomson, stated (inter alia) that all loans were monitored on an ongoing basis and no provisions had been required in the current year; and that the company intended to raise funds through more bond issues and intended to loan this money to existing and new customers.

1247. The auditors' report explained that PwC had audited the accounts. PwC also stated that, in their opinion, the information given in the strategic report and directors' report was consistent with the financial statements; and that they were not aware of anything in them which was materially incorrect or materially inconsistent with the knowledge they had acquired in performing the audit.

1248. The income statement showed turnover of £948,201 and profit of £166,916. Turnover was described in note 3 as interest receivable on loans, arrangement fees and consultancy fees.

1249. The statement of financial position showed net assets of £25,592.

1250. Staff costs were shown at £9,352. There were no directors' emoluments.

1251. Note 10 repeated the figures on the amounts of the loans and value of security set out in the strategic report. The note stated that there were no loans that were overdue and no allowances for doubtful debts.

1252. Note 18, under the heading "related party transactions", referred to loans with International Resorts Group of which Mr Thomson was recorded to have been a director until 30 June 2015.

1253. Note 19 stated that the during the year Mr Thomson had made drawings of £134,973 and incurred expenses on the company's behalf of £28,000. Included in the "other debtors" was an amount of £95,848 due from Mr Thomson.

Surge's reaction to the audited accounts

1254. The Surge Defendants submitted in closing that they relied (and were entitled to rely) on the statements in the audited accounts and the audit report to confirm that LCF was a legitimate business. Mr Careless said in evidence that Surge relied particularly on the figures for the amount of security and the loans and the identity of PwC as the auditors. He said that the fact that PwC was willing to sign an audit report satisfied Surge about

LCF's legitimacy. Mr Careless also said in evidence that the publication of the accounts resolved his previous suspicions and concerns about LCF.

1255. The Claimants noted that the audit report stated that the auditors had not conducted an audit of the strategic report or the directors' report. That is correct, but PwC nonetheless said that in their opinion there was nothing in them that was inconsistent with the financial statements. Moreover, the notes (which formed part of the financial statements) included the figures for the values of the loans and the security. I do not therefore think that the fact that the strategic and directors' reports were not strictly part of the audit has any force.

1256. As to his reliance on the accounts, Mr Careless said in evidence that he was very unlikely actually to have looked at the audited accounts. I find that he probably did not. This reduces somewhat the force of his evidence that the contents of the accounts addressed his concerns or suspicions.

1257. However, I find that Mr Careless understood that PwC had been prepared to sign an audit report and the fact that the accounts referred to security over assets of some £60 million (as he was told this by others).

1258. As to the reliance that the Surge Defendants placed on the fact of the audit, the following points are material:

i. The Surge Defendants did not know what information Mr Thomson had provided to PwC.

ii. Mr Careless and others at Surge had already concluded that Mr Thomson could not be trusted to tell the truth, and that he had given Surge misleading information in the past.

iii. For some months before the accounts were produced Mr Careless had been causing Surge to pay a monthly kickback to Mr Thomson (as explained above). These had been concealed as consultancy payments. Mr Careless knew that these sums were ultimately coming from the bondholders' investments. Mr Careless therefore knew that Mr Thomson was dishonest.

iv. The Surge Defendants also knew that LCF had given investors misleading information about: (a) the numbers of lenders, (b) the identity, associations, and characteristics of LCF's borrowers, (c) the average loan size, and (d) the independence of GST. Details of these matters are given above. There was nothing in the published accounts to suggest that PwC had reviewed LCF's marketing materials to investors, including about these matters. Mr Careless did not know what (if anything) Mr Thomson had told PwC about these points.

v. Mr Careless and Ms Venn knew that Mr Thomson had been trying to get Mr Careless and Ms Venn to sign a backdated agreement to mislead PwC, in order to obtain the release of the audit report (see above). They therefore knew that he was engaged in trying to mislead the auditors.

1259. I shall return to the significance of the audit report when addressing Mr Careless's state of mind, in light of all the evidence. However, as the documents referred to below show,

the Surge Defendants continued to have real, targeted, concerns about LCF and its business. At this stage, I record that I am unable to accept Mr Careless's evidence that the production of the audited accounts represented a watershed which put all doubts to rest. The fact that a set of accounts had been produced did not alter the matters that concerned Mr Careless and his team, such as the fact that all the loans were made to a small number of connected parties (in the double sense of being an associated group of borrowers, who also had management control of LCF as the lender).

1260. I also find that if Mr Careless had read the accounts, some of their contents would have caused further concerns. LCF's profit was notably modest compared to the profits that Surge was making. That made little commercial sense. LCF was supposed to be a substantial lending business whereas Surge was simply its (outsourced) marketing agent. Moreover, the accounts showed no director's remuneration and low staff costs and numbers. But Mr Thomson had a very well-funded living standard, as Mr Careless knew.

1261. There is little in the documentary record from the dates surrounding the PwC audited accounts to show Mr Careless discussing them with anyone within Surge.

1262. The fact that the accounts had been published, and audited by PwC, was, however, helpful as a marketing tool for Surge in selling the bonds.

1263. In his evidence about these accounts (and the audited accounts for the following year), Mr Careless said repeatedly that what he really cared about was the level of security. He said that he took comfort from the fact that there was enough to pay off all the liabilities. I find that it is likely that he did indeed take some comfort from the security figures. There are though three things to note.

1264. First, the reason he was looking for comfort was that by this stage he had serious concerns, as already explained.

1265. Second, Mr Careless could not have thought that the existence of security was a panacea if he knew or suspected that LCF had been mis-selling bonds to investors (a point addressed in greater detail below). The existence of security would of course give some protection if LCF collapsed. But it might well take months or years to enforce such security and make distributions to bondholders; that would be worse for investors than LCF being able to pay its debts as and when they arose. It might also have turned out that the security was not worth as much as the directors and auditors thought; its value might go up or down, so that the margins of protection could change. Indeed, Mr Careless knew at least some of the underlying business of L&TD had been interests in foreign land. He appreciated that having a backstop of security over assets could not have justified (or given comfort against) LCF selling to bondholders on a false prospectus.

1266. Third, the accounts did not provide a breakdown of the security, whether by type of property, or location. They gave an overall number. Mr Careless did not know how long any realisation would take or how problematic it might be.

1267. In early 2017 Mr Partridge noted that even security of £60,752,482 seemed inadequate to cover the total amount of LCF bonds then in issue on a 75% loan-to-value ratio. He drafted a letter addressed to LCF. Mr Careless approved it.

1268. Mr Partridge wrote to Mr Thomson on 6 February 2017, saying,

> "As at 30 April 2016, the last audited accounts stated that LCF held a lien on assets valued circa £60m. That gives implied security for up to £45m worth of bonds. As LCF is virtually at that figure of £45m, in terms of bond notes issued, could you give us an indication of the fair value of assets you currently hold as security against the bonds".

1269. On 9 February 2017 Mr Thomson replied to this letter (cc. Mr Careless and Mr Jones). He said that LCF's loan book stood at c. £43 million while the "verified security value" had risen to £215 million, giving a loan-to-value ratio of 20%. This was itself striking, as genuine commercial borrowers would not be likely willingly to grant so much security to LCF.

1270. Mr Partridge immediately emailed Mr Careless to say,

> "The Banana Republic must have found some black gold …
>
> He wasn't always happy back in the day providing any information".

1271. Mr Careless replied, "Well, he's [sic] neck on the line. I'm happy enough".

1272. I find Mr Partridge's email expressed scepticism about the £215 million security value. The reference to black gold was probably to oil exploration. The reference to the Banana Republic is derogatory.

1273. Mr Careless's response is revealing. He thought that since LCF were responsible for the numbers, Surge need not be bothered about their credibility. He thought that the buck would stop with LCF if things went wrong. By saying it was "their neck that was on the line," he was saying that his own was not. The same attitude is shown in his repeated evidence that Surge was just a marketing company reading from the client's script. This outlook (together with Mr Careless's keen desire for money) explains why Surge did not stop selling LCF's bonds even when Mr Careless understood that the script was misleading. What mattered to Mr Careless was for Mr Thomson to provide a covering story (a script). Surge could then continue selling.

1274. When pressed about this email exchange in evidence, Mr Careless repeatedly referred to Lewis Silkin. He said that he thought Lewis Silkin were reviewing investor communications. He also referred to Mr Huisamen. As already explained, this refrain carried little force. The basis of the questions was that Surge thought that Mr Thomson was untruthful and untrustworthy; and that Surge itself knew that he had previously provided misleading information. It was no answer to say that there were other people involved, as Mr Careless did not know what Mr Thomson had told them.

1275. Reverting to Mr Partridge's speculative comment about black gold, Mr Thomson had not broken down the £215 million figure or explained what underlay it.

1276. Ms Venn had in fact been liaising with Mr Hume-Kendall, Mr Barker and Mr Sedgwick about a possible oil bond. She explained to Mr Careless and Mr Russell-Murphy on 10 February 2017 that there had not yet been any independent valuations of the oil assets, which would take a minimum of five months. Hence, Mr Careless could not have supposed that the £215 million figure was backed by any valuation of the oil assets.

1277. The Surge Defendants took no steps to ask how the security had been "verified". They did not ask for any valuations.

1278. Surge's sales team nonetheless deployed the figure of £215 million in marketing the bonds.

1279. As explained above, LCF advertised the security figure of £215 million in The Times, The Financial Times and The Telegraph.

1280. Subsequently, in June 2017, the FCA complained about one particular aspect of the advertisement. Mr Thomson emailed Mr Careless and Mr Russell-Murphy on 1 June 2017 to tell them to remove any references to the fact that LCF was regulated by the FCA from future advertising materials.

1281. Mr Careless forwarded this to Mr Russell-Murphy and Ms Venn, commenting, "I knew that was a bad idea. Can of worms will be opened".

1282. Mr Careless generally thought that LCF should attract as little publicity as possible as this might lead to regulatory intervention. His use of "can of worms" is informative.

Further growth in sales during 2017

1283. The month of January 2017 was another record one for LCF, with sales of more than £5 million. Mr Careless emailed his team on 31 January 2017 to say, "[t]oday has been our best day on record. January has been our best month on record. As a group, we broke £1m in sales in one day … I expect to break this record several times in the next 30 days". Mr Russell-Murphy replied, "Great figures, the company is going from strength to strength and we are getting rich buddy!" Ms Baldock said, "Awesome job !" Ms Venn said, "Amazing!"

1284. The total funds received in February stood at £6,359,400.

1285. The target for March 2017 was £7 million. Mr Careless urged everyone to work long hours to hit this target ("Let's push hard").

1286. The target for April 2017 was £8 million.

1287. Surge's sales continued to grow. Surge was on track to deliver £10 million into LCF during August 2017. Mr Careless told Ms Baldock on 17 August 2017 that £12 million was a possibility for that month. LCF then began to sell ISA bonds (see further below).

Online comments about LCF and Surge's reaction

1288. Reverting to earlier in 2017, in early February a member of the public posted a message about LCF on Money Saving Expert ("MSE"), a website for consumers. The post criticised BSR, stating that "L&C are paying them for promoting the product and the

RPDigitalServices Ltd site is little more than a referral links site to a selection of products. Anyone using this site should stop doing so". They had found "links to Cape Verde, International Resorts Group etc".

1289. This post was discussed within Surge. At Mr Careless's request, Ms Baldock sent the post to Mr Thomson, who said, "Thanks for sending this over, the IRG loan isn't public information so someone who knows us has posted this. I'll have to look into it". However, having initially implied that the message contained accurate non-public information (from "someone who knows us"), Mr Thomson then changed his position and said that the message was factually inaccurate and libellous. The Surge Defendants in fact knew that there were links between LCF and Cape Verde and IRG. Mr Thomson did not give any information to rebut the concerns about LCF that had been set out in the comment on the MSE forum.

1290. On 11 July 2017 a member of the public posted a long and detailed piece about LCF on the MSE forum, which included the following passages:

> "You will find little about LC&F business operations on the website, other than description. Little about the company track record and means of interest payment to the bondholders, and repayment of capital. The website is all about marketing the mini bond, not about the loan business side of LC&F and its practical discharge of financial obligations to investors."

> "The loan market is highly competitive. One online study indicates the current average small business bank loan rate is between 6-13% per annum, from lowest to highest, much less than the loan interest rates offered by LC&F. A business loan provider online comparison website indicates rates approx. between 3.5-5.5% APR on secured business loans. An application online with Santander by an applicant with good credit standing for an unsecured one year business loan for £25,000 results in a 4.9% APR interest rate. Much less than LC&F secured business loan rates at 12-20%."

> "With such low interest rates on loans now and the large number of loan companies, it is a very competitive market. The 12%-20% lending rates applied by LC&F to SME loans may not be competitive enough in the UK asset secured loan industry. But it is unlikely that lending rates below 12% would be sufficient to cover the LC&F company and minibond marketing expenses, wages, contractor fees, and profit, as well as interest payments to bondholders. No other business model has been put forward by LC&F to pay bondholder interest and secure return of principal end of bond term."

> "A reason a business would be required to pay a higher rate of 12-20% APR on a loan is because the level of risk of loan default by the borrower is higher. That higher risk would not bode well for the LC&F bondholder interest payments, nor for return of the

SME loan capital and bondholder principal, nor for company expenditure and profits."

"It is difficult to find out any evidence for the marketing team claim that LC&F have lent approximately £15 million to approximately 120 small and medium sized business enterprises (SMEs) secured on £33 million asset value since public launch of the minibond. These figures from 2016 are out of date by a few months. As of June 2017, LC&F claim in excess of £66 million has been invested with over £215 million worth of borrowers' and LC&F's assets held as security, along with a part of the bondholder capital. Up to that latter date LC&F state no borrowers have defaulted on the loans."

"Regarding the LC&F lending side to SMEs, the bond marketing team reveals there is a trading interface between LC&F lending team and SME borrowers. From this LC&F accounts for bondholder interest payments, company profit and expenditure including contractor fees, wages and marketing costs. However, the marketing team do not appear able to substantiate this to potential or existing investors. Unlike other SME business loan providers, there appears to be no available company website interface for LC&F business borrowers to apply for business loans. No physical location other than the Companies House registered office in Tunbridge Wells. No available names of existing SME borrowers. No names of the lending team employees. No lending team employee contact, no phone, no email address for the lending team. To apply for a SME loan you are asked to go through the bond marketing company team which is unusual. No internet searches have provided any evidence of how the bondholder interest is being paid through SME loan interest, nor is there such evidence on the LC&F website, nor can the bond marketing team provide such when asked."

"This does not mean LC&F are not carrying out these commercial lending activities. This does not mean that LC&F are not paying out due interest payments to bondholders. They are honouring interest payments to date. But where is the evidence where this money is coming from? Both potential and existing investors would like this. The lack of transparency has been a major cause of mini bond failures as the lack of checks allows the steps to failure to take place. Bondholders do not appear to be able to access and check account as to what the bondholder capital is actually used for, to confirm it is used for stated purpose. In spite of the corporate trusts, the financial history of bond failures shows that the loan capital is often not used for stated purpose, which of course will precipitate collapse."

"The writers of this review hope that the LC&F mini-bond is a genuine investment offer and all the investors receive their dues

> including 100% of their capital principal at end of term, and that LC&F is able to continue to offer successful investments in the financial markets."

1291. A prospective bondholder sent this post to Mr Allen of Surge, who sent it to Ms Baldock, who forwarded it to Mr Thomson. Ms Baldock suggested to Mr Thomson that he might wish to answer some highlighted passages. Mr Careless also saw it.

1292. Mr Thomson sent an email saying that the post was "based on assumptions not facts" and was "technically incorrect on a number of issues" but he did not identify any inaccuracies or provide any contrary information. He suggested that he could go through a number of issues with the account managers during an impending visit to Surge.

1293. Mr Careless in fact knew that many of the claims in this post were accurate. He accepted in his evidence that that there was no LCF lending site; that LCF had not named any SME borrowers; that there was no LCF lending team - it was just Mr Thomson; that there were no lending team contact details; and that he had seen no evidence of how bondholder interest was being paid from SME loan interest.

1294. Mr Careless also knew that there was no evidence that LCF had lent to approximately 120 small and medium-sized business enterprises. He knew that LCF had only lent to a handful of businesses connected to Mr Golding (see above).

1295. One of Surge's sales team reported to his colleagues and Mr Russell-Murphy that the contents of the post were putting people off. On 16 July 2017 Mr Allen told Mr Russell-Murphy and Ms Baldock, "Andy needs to come back with a comprehensive reply … as this MSE forum is clearly a problem now". Ms Baldock asked Mr Thomson to provide "some answers … that are acceptable for us to reply … with".

1296. On 18 July 2017 Mr Thomson provided Ms Baldock with a document containing responses to the post. He said, "Please don't send it anywhere as its been written for internal purposes". Ms Baldock forwarded it to Mr Careless and Mr Russell-Murphy; Mr Careless forwarded it to Ms Venn.

1297. Mr Russell-Murphy reviewed Mr Thomson's draft responses and commented (cc. Mr Careless, Ms Venn and Ms Baldock), "He hasn't responded particularly well". That was correct: Mr Thomson had not provided any useable information to rebut the criticisms of LCF on the MSE forum.

1298. Over a month later, there was still discussion within Surge of Mr Thomson providing "content … to use to rebuttal [sic] specific threads and comments", but he never actually did so.

1299. I find that Mr Thomson's failure to rebut the post was a further reason for the Surge Defendants to have serious concerns about the legitimacy of LCF's business. They knew that it was in LCF's own commercial interests to answer the post: its contents were indeed damaging sales. If there had been genuine answers, Mr Thomson would have given them.

Further requests in 2017 for information about LCF's lending operations

1300. Mr Careless's efforts to market the bonds were continuing to be impaired by Mr Thomson's failure to provide information about LCF's lending operations.

1301. Ms Baldock wanted to send out a newsletter containing success stories and an overview of what investors' funds had achieved for UK SMEs during the year. She asked Mr Thomson for this information, but he did not provide it. Prospective bondholders continued to ask questions about LCF's loan portfolio. Mr Thomson was again asked about these but did not respond.

1302. On 10 March 2017 Mr Thomson provided Mr Careless and Mr Russell-Murphy with LCF's management accounts for the period ended 30 November 2016. Mr Careless sent them to Mr Partridge, who replied, "Probably worth Jack. No accountants name to it, also some of the figures just look wrong which makes you wonder who prepared. Technically short-term insolvent which doesn't look right either". Mr Careless shared this with Mr Russell-Murphy and Mr Jones.

1303. On 31 May 2017 Mr Thomson told Mr Russell-Murphy that LCF's draft accounts would be ready by the end of the week and that he would provide them when they had been finalised, although it would then take a further three to four weeks for them to be audited. Mr Russell-Murphy passed this on to Mr Careless, Mr Jones and Ms Venn.

1304. Mr Thomson did not provide the draft accounts. Mr Partridge therefore sent a letter to him on 6 June 2017 asking him to state "the current levels of both loan book and the fair value of assets that you currently hold as security against the bonds". He also asked Mr Thomson when LCF's audited accounts to 30 April 2017 were likely to be published.

1305. On 19 June 2017 Mr Thomson provided Mr Russell-Murphy with LCF's management accounts for the year ended 30 April 2017, saying, "I am still waiting on the valuation so I think we should just use the draft set we have".

1306. The management accounts disclosed a profit of £164,260 for the year and net assets of £189,853 as at 30 April 2017. The value of the security recorded was £189.45 million. This differed from the £215 million which Mr Thomson had said was the value of the security in February 2017.

1307. Mr Russell-Murphy sent these to Mr Careless and Mr Partridge, adding, "Andy has asked me not to share this with anyone at the moment". Mr Careless forwarded them to Mr Jones.

1308. Mr Partridge sent an email on 20 June 2017 saying, "Not sure how he can afford a helicopter out of these accounts." Mr Partridge was also unable to understand the accounts and told Mr Careless that he thought they looked wrong.

1309. Mr Careless was aware that helicopters were expensive. The Claimants submitted that Mr Careless must have known that Mr Thomson was wrongly paying himself out of LCF's funds (i.e. from bondholder money). I do not reach that conclusion, but I do find that Mr Partridge was raising a serious point, since the draft accounts did not show Mr Thomson earning enough to be able to buy a helicopter. I find that this was a further reason for Mr Careless to have concerns about Mr Thomson's integrity.

1310. On 27 July 2017 Mr Partridge asked Mr Thomson for an update on the value of LCF's security, which Mr Thomson had indicated he would provide in June 2017, and on the progress of LCF's audit.

1311. The Claimants submitted that this was not a genuine enquiry, because Mr Partridge did not trust Mr Thomson and was highly unlikely to give any credence to Mr Thomson's response. They said that it was part of the creation of a file to show that the inquiries had been made. I do not reach that conclusion. I find that Mr Partridge was indeed seeking more information. I do, however, find that Mr Partridge showed relatively little urgency in seeking the information and did little to press when it was not given. There is, therefore, some force in the Claimants' suggestion that at best his efforts were half-hearted.

1312. Mr Thomson replied a month or so later, on 29 August 2017, saying,

> "[t]he current value of assets we hold charges over as security totals £247.6m. Our new auditors Ernst & Young will be reviewing the details of the assets and the associated loan and security documentation as part of their audit over the coming weeks. As per last year the total value of the security will be detailed in our audited accounts."

1313. Ms Venn sent an email to Mr Careless and Mr Russell-Murphy saying, "I am really interested to know what the security comprises and how many loans are currently issued." No one at Surge knew this information at this time. Mr Thomson had not provided it despite repeated requests.

1314. Mr Thomson still did not provide Surge with information about LCF's lending business. Ms Baldock continued to ask for information for inclusion in a newsletter in an email dated 22 August 2017. On 1 September 2017 Ms Baldock emailed Mr Thomson to point out that he had not replied to her email about the newsletter. Mr Thomson was not prepared to provide the number of loans, even in general terms. He emailed Ms Baldock on 6 September 2017 to say that "this will not have a good impact as the volume of loans is not huge (sub 20) for the amount of debt out there". He went on to say that the public would not understand that lending to medium businesses was better and more cost effective. Ms Baldock forwarded this reply to Mr Careless and Mr Russell-Murphy.

1315. This confirmed Mr Careless's existing understanding that LCF had made a very limited number of loans. Mr Thomson's email did not explain how the number of loans (less than 20) was consistent with the marketing team's representations about there being 120 borrowers. Nor did Mr Careless do anything to correct this.

1316. On 23 August 2017 Ms Venn had emailed Mr Careless, Mr Russell-Murphy and Ms Baldock about a forthcoming meeting with Mr Thomson to say, "I doubt Andy has started the process to get an ISA. To have an ISA you must have first a retail prospectus bond. You place the retail bond in an ISA wrapper. I don't know why he hasn't done this yet because it's the next obvious step. I suspect that the validation process required to get through the UKLA, might scrutinise his loan book and possibly that's why he hasn't done it yet." Ms Venn and Mr Careless knew that the whole of the loan book was to companies associated with Mr Golding and I find that they thought that Mr Thomson would not want the UK Listing Authority to look into that.

1317. On 27 September 2017 LCF was featured in The Daily Mail. Mr Partridge asked Mr Careless, "Is it good sticking head above the parapet??????" Mr Careless replied, "We didn't ask to do it…." He thought that scrutiny of LCF would result in regulatory action and cause Surge's commission payments to be shut off. This is telling. A marketing company selling a genuine product would welcome publicity of this kind. Mr Careless wanted LCF to keep its head down and avoid regulatory scrutiny.

1318. On 26 October 2017 one of Surge's sales team sent an email to others in Surge (including Ms Venn) saying, "We've been asking LCF for some of their success stories for a while now, for some reason they're loath to give any details". This was making the obvious point that a legitimate lending business would have been expected to wish to give some details of their lending, as it would assist bond sales.

1319. On 8 November 2017 Ms Baldock repeated her idea for a newsletter, containing success stories about LCF's lending operations. Mr Thomson did not help. Mr Russell-Murphy reported on 15 February 2018 that Mr Thomson "wasn't keen to give a case study of a client loan". Any genuine business would have been keen to do this to encourage sales.

Citywire article

1320. On 7 December 2017 a finance website called Citywire published an article about the FSCS having to pay compensation due to a collapsed investment firm which had promoted LUKI. Ms Venn forwarded it to Mr Careless and Mr Russell-Murphy. She commented, "One of the failed investments in this payout was Lakeview UK investments. That's Spencer's firm. I checked at companies house and Roger (Spencer's in house, drunk, solicitor) [sc. Mr Sedgwick] is the director". Mr Careless replied, "Hmmm".

1321. This email raised questions for Surge, including whether the Lakeview site formed part of LCF's security. It also described Mr Sedgwick as "Mr Golding's in house solicitor". As already noted, Mr Careless knew that Mr Sedgwick was the owner of GST. He also knew that Surge had stressed the independence of GST as part of its sales pitch.

1322. There was no follow-up to this email.

Payments by Surge to Mr Golding

1323. The last of the payments by Surge to Media GPS described above was made on 6 September 2017, being 0.5% of LCF's receipts during August 2017.

1324. Soon after 7 September 2017 Mr Golding visited Surge's offices in Brighton. Mr Russell-Murphy then approached Mr Careless with Mr Golding's request to be paid 1% of the funds flowing into LCF (i.e. 4% of Surge's commission). Mr Careless agreed that, with effect from 1 September 2017, Surge would instead pay 1% of LCF's receipts to Mr Golding.

1325. Mr Golding wanted these payments to be back-dated to 1 June 2017. He sent a text message to Mr Barker on 20 September 2017, "Invoice Surge Financial, just need a basic invoice for commissions … 19A Portland Street; Brighton; BN1 1RN; England … June £5,211,119. July £8,521,624; August £8,289,673".

1326. Mr Barker prepared an invoice from "SG Golding Consulting" to Surge for "Fundraising Consultancy" with the reference JRM in the sum of £52,111.19 for June 2017 "based on a £5,211,119.00 raise"; £85,216.62 for July 2017 "based on a £8,521,624.00 raise"; and £82,896.73 for August 2017 "based on a £8,289,673.00 raise". Hence, Mr Golding was seeking payment of a sum equal to 1% of LCF's gross receipts with effect from 1 June 2017. These came to a total of £220,224.54. Mr Barker then applied VAT of 20% to give a grand total of £264,269.45. The VAT number on the invoice was that of "Home Farm Equestrian Centre".

1327. On 2 October 2017 Mr Barker sent this invoice to Mr Golding, who sent it to Mr Russell-Murphy. Mr Russell-Murphy sent it to Mr Careless and Mr Jones, commenting, "[j]ust received this from Spencer, he has back dated the invoice to June!!! Give me a call when you're free".

1328. Mr Jones emailed Mr Careless, saying, "[t]he invoice is from SG Golding Consulting, however it is not a limited company. He has quoted a valid vat number for Spencer Golding Home Farm Equestrian Centre. His invoice is for Jun-Aug (£264k inc. VAT)". Mr Jones forwarded the invoice to Ms Venn (cc. Mr Careless), asking, "[h]ow can we justify paying c£80k per month to an equestrian centre?"

1329. Mr Russell-Murphy tried to call Mr Golding to say that this was not what they had agreed. The invoice should have been for 1% of LCF's receipts with effect from 1 September 2017, not 1 June 2017; and it should not have had VAT added. And it should have been for 1% of LCF's receipts, not 1% of LCF's receipts plus VAT. Mr Golding did not answer Mr Russell-Murphy's call.

1330. The next day, Mr Russell-Murphy tried to call Mr Golding again, but again Mr Golding did not answer. Mr Russell-Murphy sent a text message to Mr Careless saying, "Spencer didn't answer my call again??"

1331. Mr Careless replied to Mr Russell-Murphy, saying, "[t]ext him, try something like this?:- Hi Spencer, Been trying to get hold of you regarding your invoice. You agreed with Paul in the meeting it would be back dated to the beginning of September only. You also agreed it would be 1% gross. The number can be £80k. Can you re-invoice please? …"

1332. Mr Russell-Murphy said, "Ok will do". No such text message has been disclosed by any party, but I find that Mr Russell-Murphy or Mr Careless did raise these issues with Mr Golding.

1333. Meanwhile, on 5 October 2017 there were WhatsApp messages between Mr Careless and Ms Venn:

i. Mr Careless said he was worried about her and had never seen her unwell.

ii. Ms Venn replied to say that she was stressed because Mr Thomson had asked if they would agree to the appointment of Surge as the Appointed Representative of LCF: "I'm sensitive to stress but I don't usually experience it. Andy has tipped me over the edge".

iii. Mr Careless then commented, "The spencer thing [has] also got to be sorted properly".

iv. Ms Venn responded, "I want us to be part of something to be proud of. I can justify a little clever marketing but I can't justify breaking the briberies act for Spencer and being unethical in our choice of who we are an AT of".

v. Later she said, "I know we can have a fair debate on this tomorrow and make a good decision. I've never felt stronger about any decision than this: it's simply wrong to be an AR of your own customer. A company we don't trust."

1334. Mr Careless accepted that "the spencer thing" was the proposed arrangement to pay Mr Golding.

1335. The negotiation regarding Mr Golding's invoice resulted in a compromise: Mr Golding would be permitted to back-date the invoice to 1 July 2017, but the total amount (including VAT) would be equal to 1% of LCF's receipts. The VAT-exclusive amount would therefore be 0.833% of LCF's receipts, which would produce a sum equal to 1% of LCF's receipts when VAT of 20% was added.

1336. On 6 November 2017 Mr Barker provided Mr Golding with a revised invoice from "SG Golding Consulting" to Surge for "Fundraising Consultancy" with the reference JRM in the sum of £71,013.53 for July 2017 "based on a £8,521,624.00 raise"; £69,080.61 for August 2017 "based on a £8,289,673.00 raise"; £64,362.14 for September 2017 "based on a £7,723,457.00 raise"; and £46,375.43 for October 2017 "based on a £5,565,052 raise". The VAT-exclusive total of these sums was £250,831.71. With the addition of VAT, this came to £300,998.05, which was 1% of LCF's receipts during July, August, September and October 2017 (as set out in the invoice). The invoice was dated 1 November 2017 and was numbered SF 001.

1337. On 8 November 2017 Mr Golding sent the revised invoice to Mr Russell-Murphy, who replied, "[g]ive me a call when you're free and I will get this organised". However, it was not paid immediately. On 23 November 2017 Mr Russell-Murphy emailed Mr Jones (cc. Mr Careless) stating, "Spencer has sent through his outstanding invoice, please can we discuss this with Paul this afternoon".

1338. On the same day, Surge paid £300,998.05 to Mr Golding. There was, therefore, a period of overlap: 0.5% of LCF's receipts for July and August 2017 had already been paid to Mr Thomson; 1% of LCF's receipts for those two months was also paid to Mr Golding.

1339. The arrangement to pay Mr Golding's invoices then continued. Further invoices were raised in each month from January 2018 until December 2018. These were for substantial amounts, in some months over £100,000. They were described as "Fundraising Consultancy Fees".

1340. As explained below, there was an ongoing discussion about Surge becoming an Appointed Representative of LCF. Ms Venn had referred to this in the WhatsApp messages of 5 October 2017.

1341. Some months later, on 17 May 2018, Mr Russell-Murphy discussed this again with Mr Thomson. After the meeting, Mr Russell-Murphy sent a report to Mr Careless and Ms Venn:

> "We discussed the SG invoicing and Andy wants to get everything out in the open. One of the requirements of our AR status with them, will be to provide our financials to LCF. Andy and Kobus will see the payment going to SG and will ask further questions. Andy said he was willing to make a 1% interest reduction on the loans to SG if we reduced our commissions to 24%. I said we will discuss this with SG and will let Andy know."

1342. This shows that:

i. Mr Huisamen did not know about the 1% fee arrangement.

ii. Mr Thomson knew about it.

iii. Mr Careless, Mr Thomson and Mr Russell-Murphy did not want Mr Huisamen finding out about it.

iv. Mr Careless, Mr Russell-Murphy, Ms Venn and Mr Thomson all thought that Mr Golding had an interest in the loans from LCF and could receive an economic benefit from a reduction in the interest rates charged to the borrowers.

v. Equally, they must all have thought Mr Golding had control or a high degree of influence over LCF: otherwise, Mr Thomson would not have countenanced a reduction in the interest rates payable by his companies as a way of compensating him for giving up the commissions being paid to him by Surge.

vi. Mr Russell-Murphy suggested that he and Mr Careless should discuss this with Mr Golding.

1343. Mr Careless struggled to explain this email in oral evidence. He resorted to a refrain that he respected Mr Huisamen. That was not an answer. He did not, however, deny that he knew that Mr Huisamen was unaware of the arrangement and that Mr Thomson did not want him to find out.

1344. Ms Venn told Mr Russell-Murphy that what he had said about "fixing the Spencer payment" sounded "very positive". Mr Careless himself said it was "All good".

1345. On 20 June 2018 Mr Barker asked Mr Russell-Murphy for "the figures for May for SG's invoice". Mr Russell-Murphy replied on 4 July 2018, "[t]he figure for May was 14,201,573.00". Mr Russell-Murphy added, "from June onwards we are looking at paying the invoice a different way. I will let you know once a process has been finalised. In the meantime, send me the May invoice and I will arrange a payment". This comment reflected a suggestion of a different arrangement (involving reducing the interest rate on the loans). In the event, things continued as before, and Mr Barker continued sending over Mr Golding's invoices.

1346. The Claimants submitted that the payments were a secret commission in the nature of a kickback or bribe, to induce Mr Golding to maintain Surge's fee at 25%.

1347. The Surge Defendants contended that they were introduction commissions.

1348. In his witness statement, Mr Careless said that Mr Golding had asked 1% to be paid as an introduction fee for connecting Surge to LCF. Mr Careless said in his statement that he had said that he would only do this with a formal agreement but that in the end this never came, and he was too busy to chase it.

1349. I am unable to accept Mr Careless's evidence that the 1% payments were an introduction fee.

i. By September 2017 Surge had been working for LCF for more than two years. Mr Careless accepted that Surge was under no contractual obligation to pay this sum to Mr Golding.

ii. He also accepted that the arrangement was uncommercial, and he said he did not want to pay it. He said that he felt pressed into it (though "not in nefarious way"). He was unable, however, to explain why he felt pressed into it. The probable inference is that Mr Golding forced him by saying that he wanted a cut of Surge's fee and threatened to reduce Surge's 25% commission arrangement. For the reasons already given, Mr Careless saw Mr Golding as the ultimate controller of LCF, or at least that he had substantial influence over it. I find that this view was bolstered by Mr Thomson's suggestion that the interest rates on the loans to Mr Golding should be reduced by 1%; if LCF had been an independent lender, there is no reason why it would have agreed to reduce its interest rates.

iii. Mr Careless also accepted that it is not normal for someone to ask for an introduction fee well after the parties were in a contractual relationship.

iv. Mr Careless accepted that the payments were not for "fundraising consultancy services" as described in the invoices. Mr Careless was therefore prepared to approve invoices which he knew to be false on their face.

v. Mr Careless also accepted that the arrangement with Mr Golding replaced the existing arrangement with Mr Thomson. If the fee had been a genuine commercial one there is no reason why this should have happened.

vi. Mr Careless was unable to give a coherent answer to Ms Venn's reference to the Bribery Act in the text messages. He said that Surge had sought to take further steps after that exchange to ensure that there was a proper agreement in place. But there is no evidence that any such agreement was ever discussed or drafted. His only reason for not chasing it, that he was too busy, was wholly unconvincing. These payments were of significant amounts and (on his own case) he could easily have insisted on a proper agreement first.

vii. In any case, he was unable to explain in his oral evidence why Ms Venn had referred to the Bribery Act unless she saw the payments as an inducement to Mr Golding to obtain a benefit for Surge. I find that Ms Venn referred to the Bribery Act because she thought that the payments were bribes; and that is because she understood that they were being paid as an inducement in order to maintain the Surge fee.

viii. Mr Careless was unable to explain why Mr Thomson was so keen to keep the arrangement from Mr Huisamen's notice, and why he was willing to go along with the suggested concealment.

ix. Mr Careless's evidence was different from that he gave to the Administrators, on oath, at the private examination in January 2020. At the examination, counsel for the administrators asked about the 1% fee paid to Mr Golding. Mr Careless said that Mr Golding would do general consultancy and give his views on the way Surge was conducting its business. He also said that it was partly an introduction fee. In his evidence at the trial, Mr Careless accepted that Mr Golding did not provide any consultancy services. Mr Careless also said in the private examination that the arrangement was entered into at the outset, when Surge were thinking about taking on LCF as a client. That was not true and was indeed misleading: it would at least have made some sense for an introduction fee to be agreed at the outset, rather than this happening two years into the parties' dealings. He also said that there may have been a written agreement documenting it. He knew that there was none. These changes in his evidence require the court to treat his evidence about this subject with serious caution. This augments the general caution with which I approach his evidence.

1350. For these reasons, I am unable to accept the case advanced by the Surge Defendants that the payments were an introduction fee. I find that Mr Careless agreed to pay a secret commission to Mr Golding to induce him to maintain Surge's commission at 25%. Mr Careless did this reluctantly, but thought he had no choice. Mr Careless was indeed pressed into these payments by Mr Golding: the exceptionally high fees paid by LCF to Surge was under threat and he wanted to maintain them.

Discussions about Surge becoming LCF's appointed representative

1351. As already noted, in October 2017 Mr Thomson raised the idea of Surge becoming an appointed representative ("AR") of LCF within section 39 of FSMA.

1352. An AR is a firm or person who carries on a regulated activity under the responsibility of an authorised financial services firm.

1353. As noted in [1333] above, on 5 October 2017 there was a WhatsApp exchange between Mr Careless and Ms Venn in which Mr Careless expressed concerns about her health.

1354. She said, "Andy hasn't asked us to be an AR before. I'm very sensitive to stress but I don't usually experience it. Andy has tipped me over the edge. It's just a bad headache … The issue is that being an AR of Andy could be a permanent headache".

1355. She added, "I've never felt stronger about any decision than this: it's simply wrong to be an AR of your own customer. A company that we don't trust."

1356. Mr Careless did not respond to this message.

1357. Ms Venn and Mr Careless sought in their evidence to say that their problem with Mr Thomson was a personality clash, that he was misogynistic, lazy and difficult to deal with. I accept that there was a personality clash, but it went further, and the problem was

more serious and basic. Surge did not trust LCF. This was Ms Venn's genuinely held view about LCF in an unguarded communication she never expected to come to light.

1358. Ms Venn decided to investigate the possibility of becoming the AR of a different company, Alexander David Securities. She emailed Mr Angus Rose of Alexander David Securities on 17 January 2018 to report that Surge would not be appointed as the AR of LCF.

The ISA bond

1359. On 16 August 2017 Ms Venn met Mr Huisamen and discussed innovative finance ISAs. He began to investigate the possibility for LCF and seems to have told Mr Thomson about this opportunity. Mr Thomson started the process to launch LCF's innovative finance ISA bond. By 1 November 2017 the process of putting together an ISA bond was well underway.

1360. In a call on 20 November 2017 Mr Thomson told Mr Russell-Murphy that HMRC had given the necessary approval for LCF as an ISA manager and that Lewis Silkin had finalised the ISA bond documentation. They expected it to go live imminently.

1361. The LCF ISA bond was launched at the beginning of December 2017.

1362. On 4 December 2017 Mr Careless, Mr Russell-Murphy and Ms Venn agreed that the LCF ISA bond would be "put top of BSR asap". It was ranked first on BSR at once.

1363. The LCF ISA bond was an instant sales success. On 4 December 2017, Mr Baldock told Mr Careless that they had already hit £1 million in applications for December. On 7 December 2017, Aaron of Surge told Ms Baldock that they had received almost £500,000 into LCF's payment processor, GCEN, in a single day. She said, "Holy shit!". On 8 December 2017 Ms Baldock sent an email update to her colleagues which began with the words, "Isa Isa baby!" She said in her email, "[t]he scores on the doors after 5 days are: Applications in 632 totalling £4,816,419. Cash in at Gcen £3.3m … With these figures after one week imagine what can be achieved by hitting the lists and being proactive this could mean a very nice payslip in Jan!"

1364. Surge assisted the LCF ISA bond sales by launching two new comparison websites: "The ISA Experts" and "The Savings Experts". Mr Barnard of Surge emailed his colleagues, including Mr Careless and Mr Russell-Murphy, on 1 January 2018, to say that they would be game changers.

1365. On 1 January 2018 Ms Baldock emailed her colleagues to say that December 2017 had been a record month with total cash in of more than £7.8 million and total applications of more than £11 million. A few days later, she told her colleagues that there had already been a massive start to 2018, with cash in of more than £2.5 million in just a few days. By 21 January 2018, the cash in figure for January 2018 was already over £8 million. It seemed that January 2018 was going to be LCF's strongest month ever. On 23 January 2018 Mr Careless emailed Mr Thomson saying, "I can now confirm that this month is your best yet, the ISA has elevated LC&F to new heights". On 5 February 2018 Ms Baldock emailed her colleagues again to say that they had finished the month at £13.4 million cash in.

1366. In February 2018 LCF generated cash in of £9.9 million. In March 2018, there was cash in of £9.4 million in the first three weeks.

1367. In April 2018, total cash in was £19.3 million.

1368. LCF then launched a new five-year bond. The first sale of this took place in early June 2018. Mr Careless said, "Boom!!!" June also saw significant bond sales.

1369. In July 2018, there were 902 new deals totalling £12,657,904.

1370. In August 2018, there were 895 new deals totalling £12,667,400.

1371. September and October 2018 also saw substantial sales. Mr Russell-Murphy told Mr Thomson on 24 October 2018 that "the completed cash in figure for the month will be nearly double compared to this time last year. We've come a long way, although 10m is our minimum target these days".

1372. In November 2018, sales were £10.5 million.

Concerns before the launch of the ISA bond

1373. Reverting to the period before the launch of the ISA bond, Surge had been doubtful about LCF's ability to sell such a bond within the legal and regulatory framework.

1374. There were two relevant legal rules. First, to qualify for tax-free status under Reg 8A of the Individual Savings Account Regulations 1998/1870 ("the ISA Regulations") the bonds had to be transferrable. Second, any person issuing transferable bonds for a total consideration of more than €8 million over a period of 12 months had to publish a prospectus: see Articles 2 and 3 of the Prospectus Regulation 2017/1129.

1375. The ISA bonds issued by LCF were non-transferable. This was made clear in terms. This allowed LCF to avoid the need for a prospectus. However, it also prevented the bonds from having tax-free status under the ISA Regulations. So, they could not accurately be described as ISA bonds. Any representation to the effect that LCF's ISA bonds enabled investors to earn interest on a tax-free basis was therefore misleading.

1376. Later in the history, this was the reason given by the FCA in the first supervisory notice dated 10 December 2018, requiring LCF to withdraw the ISA bond:

> "In order for bonds to be qualifying investments for an innovative finance ISA they have to meet certain conditions, including that they are transferable (Regulation 8A(2) and (4) of the Individual Savings Account Regulations 1998/1870). LCF's website makes clear that its Bonds are non-transferable. It therefore appears that LCF's Bonds do not qualify to be held in an ISA account and that investors are being misled by being told the interest they earn will be tax free".

1377. Returning to the period before the launch of the ISA bonds, the documents show that Mr Careless, Surge, Mr Russell-Murphy and Ms Venn had serious concerns that LCF's ISA bonds were not eligible for tax-free status and that the claims made by LCF (and by Surge's sales team on LCF's behalf) about "tax free" status were untrue.

1378. As already noted, on 20 November 2017 Mr Russell-Murphy told Mr Careless, Ms Venn and others that HMRC had approved LCF as an ISA manager. Mr Careless said, "That is good news". Ms Venn said, "I'm impressed. Blackmore's lawyers told us that it was necessary to have a retail prospectus but Andy has obviously found another route. Great news!"

1379. On 21 November 2017 Mr Thomson emailed Mr Careless, Ms Venn, Ms Baldock and others to say, "See below from HMRC, another chapter in LCF fundraising is beginning". Mr Careless said, "Brilliant news".

1380. Ms Venn asked Mr Huisamen how LCF had managed to avoid the requirement for a prospectus. He told her that LCF's ISA bond was not transferable and that the requirement for a prospectus did not apply.

1381. Ms Venn knew that Mr Roger Blears of RW Blears LLP had been advising Blackmore about a retail prospectus. She looked back at her notes of her discussions with Mr Blears and found that bonds must be transferable to be tax-free under Reg. 8A(4) of the ISA Regulations. Ms Venn spoke to Mr Blears about this. He repeated that a bond had to be transferrable to qualify for tax-free status under the ISA Regulations 1998.

1382. Ms Venn emailed Mr Huisamen on 1 December 2017, saying,

> "When you mentioned that the bonds are not transferable and this is how you have been able to offer £50m and not just up to the s.21 exemption of EUR 5m; I just looked back at my notes to double check and I found that our solicitor had given us contradictory advice: ISA Regulations 8A(4a) state that bonds must be transferable to be offered as an IF ISA. The only exemption being to issue under the EUR 5m exemption. I have just got off the phone to Roger Blears who has been advising Blackmore on their retail prospectus to double check my understanding and he was adamant that this is the case. I thought I should let you know …"

1383. Ms Huisamen disagreed with this in an email on 1 December 2017 (cc. Mr Thomson). He quoted a different rule and ignored Reg. 8 of the ISA Regulations.

1384. Ms Venn noticed this oversight. She emailed Ms Baldock, Mr Careless and Mr Russell-Murphy. She sent the earlier exchange with Mr Huisamen and said,

> "Kobus is really sticking to this (strangely citing a different rule than the one I shared with him). I could quote the legislation back at him explaining why (as 3 separate solicitors explained to me) he isn't exempt from the EUR 5m limit. However, it's not appropriate for me to push it and ultimately we did our job by double checking.
>
> So as directed by Kobus and Andy we do have a £50m limit which is really fantastic news. Is there a risk that this cause a big issue down the line having to repay bondholders over the EUR 5m and possibly having to write to all to explain? Possibly but I

> suspect this risk is low because he is nearly ready with his retail prospectus and once he submits that in two months' time he could have a new ISA offering anyway".

1385. Mr Careless said, "It's great news!" Ms Venn replied, "[y]es in a strange way this is fantastic news!"

1386. On the same day, 1 December 2017, Ms Baldock drafted an email about the LCF ISA bond to be sent to existing LCF bondholders. As well as stating that the ISA bonds were tax free, the draft email said, "[p]lease be aware that this initial offer is limited to £50 million total investment and we're expecting a high demand". Hence LCF promoted the ISA bonds despite having no answer to the concern about Reg. 8A(4) and the lack of any answer to it.

1387. Mr Russell-Murphy asked Ms Baldock, "Isn't the limit 5m not 50 on this one?" Mr Russell-Murphy then saw another version referring to "£50 million total investment" and said to Ms Baldock, "Again, 5m raise".

1388. Ms Baldock responded to Mr Russell-Murphy, saying, "All been checked out with Kobus and questioned by Kerry and apparently this is correct. Just as well as the phones have been ringing off the hook since 10am!" Mr Russell-Murphy replied, "They've got it wrong, you have to issue a full prospectus to do 50m. What does the IM say?"

1389. Ms Baldock provided Mr Russell-Murphy with the email chain containing the exchanges between Ms Venn and Mr Huisamen. Mr Russell-Murphy responded, "Thanks jo, it's there [sic] problem". Ms Baldock replied, "Exactly, we have evidenced that we have challenged it that's all we can do".

1390. Hence, Ms Venn, Mr Russell-Murphy and Mr Careless knew that there were serious questions about the tax-free status of the ISA Bonds. They knew that the lawyers instructed by Blackmore had explained that the ISA Regulations required such bonds to be transferrable and that LCF's ones were not. Reg. 8A(4) was clear in requiring this; there was no ambiguity in it. They knew that Ms Venn had specifically highlighted this provision to LCF. They knew that LCF had not addressed it. Their response was to say that this was LCF's problem and that they had done enough.

1391. I find that Ms Venn, Mr Russell-Murphy and Mr Careless knew that LCF had not properly answered their concerns about Reg 8A(4), but that they were anxious to benefit from selling the ISA Bonds they did not pursue the point. They thought that they would be able to say that it was now LCF's problem if anything went wrong; and would be able to evidence the challenge they had made.

1392. Ms Venn was clearly not actually satisfied with LCF's answer. She checked the point with a solicitor called Mark Holleran, who decided to consult Mr Blears. On 10 December 2017, Mr Blears replied:

> "There are two offers: (1) Non-transferable securities – series 1 ISA, 3-year 8% Bonds; and (2) Non-transferable securities – series 2 ISA, 2-year 6.5% Bonds
> Both IMs have been approved as financial promotions pursuant to section 21 FSMA. The target raise is £50 million in each case.

> They are not prospectuses. There is no need that they should be because the bonds being issued are not transferable and the Prospectus Rules only apply to transferable securities.
> On page 7 of each IM there is a statement that investors are able to hold the Bonds in a LC&F innovative Finance ISA. However, the ISA Regulations provide that debentures (i.e. bonds) may only be held in an innovative ISA account if the conditions in Regulation 8A(4) are met and the first condition is that the debenture is a transferable security. See page 54 on the attached document which is a consolidated version of the ISA regs which I printed off in April when we were first instructed.
> Jake is the ISA expert and so in case there has been a recent amendment to the ISA regs which enables bonds to be held in an IFISA account even where they are not transferable I am copying Jake into this email with the request that he confirms whether or not he knows of any rule change which dispenses with the need for IFISA bonds to be transferable.
> This tax point aside, if IFISA bonds are transferable then a company can issue up to €5million in any rolling period of 12 months without the need to publish a prospectus.
> I have confirmed this advice to Kerry on several occasions in the last few weeks. If LC&F are doing something clever which we have missed then we should learn what it is and copy them. I have not as yet read the IMs from cover to cover. If you would like me to do so I gladly will but I think this preliminary point needs to be addressed first.
> Jake, please can you opine on the ISA regs".

1393. On 11 December 2017 Mr Jake Wombwell-Povey sent an email to Mr Holleran and Mr Blears to confirm that it was necessary for the bonds to be transferrable. He added:

> "Ineligible securities being held within an ISA can result in the ISA manager receiving penalties, and the tax saved being charged to the ISA manager; the aggregate of these can create a large potential liability for the ISA manager".

1394. This advice was unequivocal. The email also showed that there could be large potential liabilities for LCF.

1395. Mr Holleran forwarded the email chain to Ms Venn, explaining that "the bonds are clearly stated in the IM on page 2 to be non-transferrable which both Jake and Roger are telling us is not allowed for ISAs".

1396. Ms Venn told Mr Holleran that Lewis Silkin had been advising LCF in connection with LCF's ISA bonds. She said, "Perhaps LCF have got this wrong but this surprises me because Lewis Silkin are a great firm". Mark Holleran commented (cc. Ms Venn) that Lewis Silkin were "not specialists in this area".

1397. Mr Holleran forwarded Ms Venn's email to Mr Blears, who replied (cc. Ms Venn), "the reality is that LC&F may simply have missed the point about transferability under the IFISA Regs … I am inclined to think LC&F have simply missed the point on

transferability and/or that their offer documents are a sham attempt to sidestep the prospectus directive". Mr Holleran agreed, adding in a message to Mr McCreesh, "I really do think that they have missed the point here". Mr Holleran forwarded this email chain to Ms Venn.

1398. On 20 February 2018 Ms Venn raised the point again with Mr Huisamen, who told her (cc. Mr Thomson and Mr Careless), "[w]e don't need a prospectus, because our securities are not transferable … The ISA is only a tax break on top of the underlying security. The ISA is not the security and does not have any bearing on the structure of the underlying security".

1399. Ms Venn was not satisfied with this response. She checked the point again with Mr Blears, who confirmed his advice, explaining on 20 February 2018: "LCF seem to be selling non-transferable bonds in order to avoid the prospectus directive and yet claiming they qualify for holding in an IFISA notwithstanding that IFISA eligibility requires bonds to be transferable!!"

1400. Mr Blears suggested by email of 20 February 2018 that Ms Venn should email Mr Huisamen saying,

> "LCF seem to be selling non-transferrable bonds in order to avoid the prospectus directive and yet claiming they qualify for holding in an IFISA notwithstanding that IFISA eligibility requires bonds to be transferrable. There appears to be a serious problem here. Please can you ask your lawyers to write to us providing clear advice."

1401. Ms Venn forwarded this to Mr Careless and Mr Russell-Murphy and said that she wanted to discuss it with them. There is no record of their discussion.

1402. There is no record of Ms Venn sending an email to Mr Huisamen as Mr Blears had suggested. I find that Mr Careless probably decided not to pursue the issue further.

1403. Instead, Surge's sales team continued selling the LCF ISA bond to members of the public in large numbers. A major selling point was that interest paid by LCF to bondholders would be tax free.

1404. I find that Mr Careless, Mr Russell-Murphy and Ms Venn allowed Surge to continue to sell the LCF ISA bond knowing that there was (at least) a serious risk that it did not qualify for tax-free status. They obtained unequivocal advice about an unambiguous statutory requirement. The problem was not a difficult or esoteric one: it was a basic condition of ISA status that the bonds were transferrable. Mr Careless, Mr Russell-Murphy and Ms Venn positively disbelieved what LCF had told them about the tax treatment of the bonds. They also knew that the potential consequences were serious as it would mean that LCF was guilty of serious mis-selling: bondholders would be liable for tax they had assumed they would not have to pay. Surge also received advice that it should require an opinion from LCF's lawyers specifically addressing the point about transferability and they did not pursue this.

1405. As explained above, Surge stood to receive large commercial rewards from selling the ISA bonds and Mr Careless, Mr Russell-Murphy and Ms Venn thought that responsibility

would rest with LCF if things went wrong. They also thought if things turned out badly for LCF, they could show that they had challenged LCF, and they thought this would insulate them from responsibility.

1406. Surge was not passively standing by. Its sales team enthusiastically marketed the ISA bonds and made much of their tax-free status.

Westminster Corporate Finance

1407. In late 2017 Mr Careless, Mr Russell-Murphy, Ms Venn and Ms Baldock were involved in discussions about another potential fund raising project involving Mr Hume-Kendall and Mr Golding, which came to be known to the parties as “LCF 2”.

1408. Mr Careless accepted in his evidence that these discussions came about because of concerns that LCF might be shut down by the regulator or might become insolvent. He said that he had that concern because he was cynical about all such mini-bond products and that they wanted to have a back-up bond operation ready and waiting to seamlessly replace LCF if that happened. This would ensure that the flow of money to Mr Hume-Kendall, Mr Golding and Surge would not be interrupted. LCF 2 was, in short, to be a back-up mini-bond.

1409. Mr Hume-Kendall and Mr Golding incorporated a new company, Countrywide Corporate Finance plc, on 9 November 2017. Mr Paul Sayers was appointed as a director. In mid-November 2017 Mr Careless and Mr Russell-Murphy had a meeting with Mr Hume-Kendall and Mr Golding to discuss this project. Mr Russell-Murphy typed up his notes of the meeting and sent them to Mr Careless on 24 November 2017.

1410. Mr Russell-Murphy said in the notes that “CCF will be a back-up in the event of LCF having any issues in the future”. Mr Russell-Murphy also mentioned that he was not convinced about the name “Countrywide” and thought that they could do better. He also said that the website should lead to a corporate lending site.

1411. On 11 December 2017 Mr Russell-Murphy and Mr Hume-Kendall spoke several times about LCF 2. Mr Russell-Murphy reported this to Mr Careless. Mr Russell-Murphy also told Mr Careless that he was researching various corporate lenders online to get a feel of the content and look of what they were doing. He said that Mr Golding was meeting Mr Thomson that afternoon and was going to be in touch afterwards to let them know how Mr Thomson responded.

1412. Mr Thomson was not going to be part of LCF 2. It was proposed that Mr Careless’s former colleague, Mr Tovell, would lead the new operation. Mr Careless’s meeting notes of 2 January 2018 stated: “LCF 2 (currently Countrywide Corporate Finance) in development with Mike proposed to head up. New name required to replace Countrywide”.

1413. On 9 January 2018 Mr Russell-Murphy and Mr Golding discussed the choice of name and the fact that Mr Thomson would not be involved. Mr Russell-Murphy reported back to Mr Careless and Ms Venn afterwards,

> “I met Spencer earlier but unfortunately Simon HK wasn’t available. Spencer said he was not bothered about the name

> 'Countrywide' and said we can rebrand the company anyway we like. He also said it makes sense to have a clear divide between the new co and LCF, with this in mind we will not be using Andy to [approve] the marketing material …
>
> He was not aware of a business plan for the new company and suggested I call Simon in the morning which I will do. I suspect there is no plan in place and we will need to build this from scratch. I will send another email once I have spoken with Simon".

1414. After that, there was some discussion about using the name Portland Corporate Finance plc. Ultimately, the name Westminster Corporate Finance plc ("WCF") was chosen. On 21 January 2018 Mr Careless commented, "I love the new name"; "It's perfect!!!"

1415. There was continuing discussion about who should become the CEO of the new company. There was initially a discussion about using Mr Neil Harris or Mr John Lutterloch. On 29 January 2018 Ms Venn suggested to Mr Careless and Mr Russell-Murphy that a man called Dave Woodcock would be a good choice, adding, "I believe he has the balls for the risks involved".

1416. Mr Russell-Murphy replied to Ms Venn (cc. Mr Careless), "Thanks Kerry but they won't agree. They want their own man, so funds get utilised their way". Mr Careless agreed, saying, "Yes, precisely what John says". Mr Russell-Murphy reiterated to Ms Venn, "They won't agree, will explain why face to face".

1417. Mr Careless at first denied in his oral evidence that the new company, Westminster, was going to be raising funds for Mr Hume-Kendall and Mr Golding but ultimately accepted that it was possible that he did know that this was the case. I find that Mr Careless and Mr Russell-Murphy indeed knew that Mr Hume-Kendall and Mr Golding would insist on choosing the management of Westminster so that they could ensure that the funds were used as they wanted.

1418. Mr Russell-Murphy's email shows a concern not to say any more in writing. Mr Careless shared this concern, adding, "[c]an we stop the emailing and discuss in the morning please". Mr Careless did not accept in oral evidence that he was concerned about there being a written record of Mr Russell-Murphy's comments, but he was unable otherwise to account for this. He said it was because the email was at 17:15 and he wanted a quiet night. That was not credible. There are countless emails showing Mr Careless working very long hours and many emails where he urged others to do the same. I find that he asked to "stop the emailing" because he did not want there to be a paper trail showing how Mr Hume-Kendall and Mr Golding intended to use Westminster as a fund-raising vehicle for their businesses.

1419. On 8 February 2018 Mr Careless sent an email stating, "Westminster: This need[s] setting up quickly and holding in reserve a backup to LCF". Ms Baldock said she would help. Mr Careless thought that setting up WCF as a backup was urgent; he thought by this stage that there was a real prospect of LCF failing.

1420. There was also some concern about using Mr Sayers as a director of the new company. He had previously been a director of LCF. This connection was not ideal. Mr Russell-

Murphy said to Ms Venn on 1 February 2018, "[h]old off on including Paul Sayers, I don't want to use him as he was noted as a director with LCF. I will speak with Simon regarding this".

1421. They also wanted to avoid mentioning Mr Golding's name in the context of WCF. On 16 February 2018 Mr Russell-Murphy emailed Mr Careless and Ms Venn with the subject "WCF" to say, "Simon has called regarding the meeting on Tuesday, he said can we not mention SG to any of the board members, his name will not be involved in the company". He also explained that Mr Hume-Kendall had told Mr Russell-Murphy that one of LCF's borrowers, Prime RDL, had been "buying assets from Simon/Spencer's company".

Further posts on the MSE forum

1422. On 14 February 2018 there was another post about LCF and Surge on the MSE forum. This included the following:

> "I mentioned Surge Financial Ltd in an earlier London Capital and Finance post above. This company is responsible for the marketing and administration of the LC&F mini-bond investment. It mans the LC&F 0800 number. According to Companies House Annual Return, Surge has two officers, Paul Careless and Kerry Jane Graham. The company has on average 10-15 employees according to LinkedIn, although more than this number is said to be involved with LC&F. Surge, based in Brighton, has been in existence for three years and according to Companies House Annual Accounts has made in the last financial year most of the 1.5 million pounds income since formation. Perhaps that has mostly come from its employer, LC&F. Credit where due, good performance for a start-up company by the officers and staff.
>
> We have all heard of the adage: don't bite the hand that feeds you. However, you would think the officers and staff of Surge would want to know something about how LC&F, a commercial lender, a very small start-up with debts and no previous track record of SME lending is making the money to pay Surge, company expenses and profits, and the investor interest, especially as that is not clear at all. Yet staff in Surge appear to have no information about the bond related commercial lending business of LC&F, even basics such as how many lending team employees, who they are and where they are based. In fact there are only two employees in LC&F, both students according to LinkedIn.
>
> I can understand Surge Financial not pursuing it, but it should be careful. If LC&F does fail and any wrongdoing or negligence is shown in the receivership process then for sure the daily newspapers will jump on it, as in the case of recent mini-bond failures (Secured Energy Bond and Providence Financial), and Surge could end up being a casualty in the media fallout.

If I was an officer in Surge Financial that would make me a little concerned. Why? For the same reason investors and prospective investors in LC&F should be concerned. Everything depends on the success of this vague commercial lending business: company profits, wages, contractor payments, tax payments, investor periodic interest and repayment of capital.

Yet LC&F have not disclosed evidence of the sme lending business existence. This does not mean it does not exist. Rather very few appear to know that it does exist. Audited Account Returns are lodged at Companies House. Is it the norm for loan companies offering investment bonds to not provide such information? Data protection is a lame excuse as data protection laws in the UK only apply to live individuals not to companies.

Many companies like to showcase their trading clients names on their websites, including the company website of one former director of LC&F. You see many invited investor Feefo reviews on the LC&F website. Do you see any names of the hundreds of companies LC&F is lending investor capital to on the LC&F bond website? No, only numbers, how many and how much and not a single loan failure, even though the LC&F loan interest rate as high as 12 to 20 per cent, well above average, would indicate a greater lending risk.

It is true that employees and directors are bound re disclosure by their employment contracts, but we are here talking about disclosure of the basic fundamentals of the very existence of a business which is supposedly the only source of LC&F income and bond interest payments. But what if a company had no choice but to not provide or disclose evidence of a commercial business because the business actually did not exist? The only business that can be really seen to exist in the case of LC&F is the bond marketing business exclusively dealt with by the LC&F website run by the contracted Surge Financial. Millions of pounds of bondholder capital brought in by Surge for LC&F with no proof of what it is actually being used for and no proof where the company earnings and capital interest payments are coming from.

Thousands of reasonable, experienced and risk aware investors, not confused savers, are investing in LC&F (and other mini-bonds). Probably aware that there is no proof of the existence of the lending business, no track record of sme lending. Yet they are all quite happy to invest in an unregulated, unprotected, non-negotiable, 100% capital at risk investment product, assuming a much higher than average market rate of capital interest and 100% return of capital. However, even if a track record of past and present business is provided this does not mean the company will not fail.

> Explanations for this assuming investment behaviour? Is it the result of slick advertising and marketing? Is it somehow related to the herd mentality seen in the stock market? The Lemmings syndrome? More money than sense? Lack of time or will to investigate? Is common sense doomed on the rocks of greed or even desperation to find a reasonable interest rate? Or even perhaps arises from the false promises of optimism? Or simply, it's working so far?
>
> If I invest in a company especially a start-up I expect honesty, openness, disclosure, verified trading facts and figures, and so on from the beginning. Like others I get very concerned not just for me but for other potential investors if legitimate questions are answered evasively and there is no proof of trading. If I ask what is one plus one, I expect the answer to be two not three or whatever evasiveness or excuse as an answer. Never rely on just a company statement as to what are its business doings. Never assume it is true. Always seek verification, third party preferably. Due diligence is essential. Otherwise you may be risking all your investment returns and capital on a promise. Investment is not the same thing as gambling."

1423. Mr Russell-Murphy reviewed this and commented to Mr Careless, "[i]t mentions that there is very little evidence that LCF lends to SMEs as there is no lending site. Not sure if this is an issue or not". Mr Russell-Murphy added, "It does bring up a good point about the lending site, this is why I have been pushing for WCF to have a strong lending element to their website".

1424. Mr Careless responded (cc. Ms Venn and Ms Baldock), "How long have I been saying that LCF needed a client site for lending????" Ms Baldock replied, "I know! FOREVER!!!"

1425. Ms Venn commented to Mr Careless and Mr Russell-Murphy,

> "We are not referenced in a bad way. Some of what is said about Surge is very fair and some was even complimentary about us doing a good job.
>
> One negative criticism was that Surge could be turning a blind eye to get fees for marketing a bad asset. The criticism is all about speculation that LCF could be a sham, mostly based on the fact that there is no evidence of who LCF lend to which the writers consider to be strange. They don't like the fact that account managers will not answer even the most basic questions about who many companies have been lent to.
>
> I thought the article was strange in the way it was written and the references to us. Made me wonder about the motives of the author and whether it was written by an independent observer."

1426. Mr Newman-Jones then circulated a link to a document. Mr Careless could not open it and asked, “What is it?” Mr Newman-Jones explained (cc. Mr Careless, Mr Russell-Murphy, Ms Venn and Ms Baldock), “[i]t’s a lending site that Andy half set up but never completed”. Ms Venn said, “I know we don’t want call to actions that take investors away from the bond website but possibly we need a link to this corporate website in some place? … Would this tick a box? More importantly, we must have a case study, surely we can press to get just one case study, JRM?”

1427. Mr Russell-Murphy replied, “[y]es, I’m sure we can get a case study, I will ask Andy … A lending site should have one clear message – LCF wants to lend money to businesses, that’s it”.

1428. In the event LCF never publicly disclosed the names of any of its borrowers or gave any case studies.

1429. On 14 February 2018 Mr Russell-Murphy emailed Mr Careless (cc. Ms Venn):

> “Paul, I’ve just been talking to Kerry about how to protect ourselves better following the blog that was on MSE.
> We need to create a role for an individual who has the responsibility of ongoing due diligence on our clients – LCF and BB.
> The information that we should be collecting is quarterly management accounts, company responses to any bad press or blogs, recording of minutes when meeting our clients etc. This should be collated and put in a shared management file.
> If one of our client bonds fail in the future, we could then show a history of ongoing DD. This won’t help the investors but will help protect our reputation and soften the blow if a bond does fail.”

1430. Mr Russell-Murphy appears to have regarded a potential LCF failure as principally an issue of reputation management. Their work on LCF 2 shows that they thought that the failure of LCF was a serious possibility by this stage.

1431. Mr Careless replied (cc. Ms Venn), “We already do what we can. For example, I have Mark Partridge request accounts, underlying security reports from both bonds. I have been running this for two years. … Mark P is best placed”.

1432. The Claimants submitted that this shows that all of Mr Partridge’s questions (going back to early 2016) had never been about seeking to get to the truth. Instead, they were to create a paper trail. I think that is too sweeping a submission. I consider that the early inquiries (in early 2016) had been seeking answers. But as explained above Mr Thomson often stalled, and gave little information. The information LCF did provide was often inconsistent, vague or misleading (as Mr Partridge saw and communicated). As detailed above, as time went on the inquiries became patchier, and had indeed largely ceased by late 2017.

1433. I find that by the time of this email exchange of 14 February 2018 between Mr Russell-Murphy and Mr Careless, Surge's inquiries had become perfunctory and formal. Surge's primary concern appears at this stage to have been reputation management in the event of the collapse of LCF. By this stage they thought that there was a serious risk that LCF would collapse.

1434. Ms Venn then emailed Mr Thomson (cc. Mr Careless, Mr Russell-Murphy and Mr Partridge), saying,

> "Paul is away at the moment but has asked me to contact you … Can you please confirm when the audited accounts will be ready? In the interim, please can you give us information about current performance and the security, ideally management accounts and a summary of the loan book? We are processing large amounts of investor funds and need to be assured of the current position as a duty of care to your investors."

1435. I am satisfied for the reasons just given that this was a perfunctory inquiry, for the sake of form. After its long history of being fobbed off by Mr Thomson, Surge did not expect useful information. By this stage it was concerned to protect its own reputation.

14 February 2018: LCF accounts for the year ended 30 April 2017

1436. On 14 February 2018 LCF signed its accounts for the year ended 30 April 2017. The auditors were EY.

1437. The strategic report, signed by Mr Thomson, explained that the company's principal activities during the period continued to be the raising of funding through the issuance of medium-term private bonds to retail investors and lending the proceeds to medium sized businesses on a fully secured basis. During the year, there had been bond additions of £53,397,157 and bond redemptions of £2,444,954. The company had issued loans with an aggregate value of £50,392,963. At the year end, the company had a total of 11 corporate borrowers (2016:5). Loans issued had an average maturity profile of three years. Secured assets were valued at £284,725,329 against the notional value of loans as at 30 April 2016 of £58,798,639, a ratio of 21%. The report stated that company policies were aimed at minimising credit risks by requiring that loans be made only with customers who demonstrate an appropriate payment history and satisfy creditworthiness procedures.

1438. The directors' report, signed by Mr Thomson, stated that the company intended to raise funds through more bond issues and intended to loan this money to existing and new customers.

1439. The auditors' report explained that EY had audited the accounts. EY also stated that in their opinion the information given in the strategic report and directors' report were consistent with the financial statements and had been prepared in accordance with applicable legal requirements; and that in the course of the audit they had not identified any material misstatements in them.

1440. The income statement showed a net profit of £273,234. Interest receivable and similar income was shown as £7,822,771 and finance costs as £6,604,137.

1441. The statement of financial position showed net assets of £298,827. There were net current liabilities of £3,146,182.

1442. Note 1, under the heading "loans and receivables" explained that the transaction costs incurred by the company in relation to the issue of bonds were passed on to the borrower by the company by way of a deduction in the initial value of the loan relative to the par value. The borrower was required to repay the loan at par on maturity.

1443. Staff costs were shown at £87,689 with no directors' remuneration. There were 6 employees, including directors.

1444. Note 7 stated that there were no loans that were past due or impaired. The terms of loans were bespoke to each borrower depending on their circumstances and credit history. It added that a fixed rate of interest is applied to each loan plus fees and other associated costs which will be repaid by the borrowers over the life of the loan.

1445. Note 9 ii) repeated the security figure and ratio given in the strategic report and stated that this mitigates the risk that the company will lose the capital value of the loan in the event an investee company defaults.

1446. Surge did not see these accounts at once. Mr Russell-Murphy emailed Mr Careless and Ms Venn (cc. Ms Baldock) on 19 February 2018 to say that Mr Thomson had told him the accounts had been filed, but that he had checked with Companies House, and they were not yet available. Mr Thomson had told him that the revised security figure was £287 million with a loan to value ratio of 21%. Ms Baldock immediately emailed the sales team to give them the figure of £287 million.

1447. Mr Careless and Ms Venn each asked Mr Partridge to look at the accounts.

1448. Mr Partridge emailed Mr Careless and Ms Venn on 20 February 2018, saying,

> "Well good news.
> EY have assessed their security at £284 million which gives them 5x cover on loan book at 30/4/17. What bonds in £m have been issued since then?
> I can't quite reconcile their costs to commissions that Surge should have been paid on new bonds (at least £13m on £53m increase in bonds o/s) their cost including interest paid is only £6.6m. Not really our issue though the man [sic] thing is the bond cover looks more than adequate."

1449. Mr Careless said that he remembered seeing this email and that he had taken comfort from it. The Claimants pointed out that it was specifically drawn to his attention by Ms Venn after LCF's collapse and Mr Careless's arrest as part of an attempt to find exonerating evidence. I find that Mr Careless did indeed see the email at the time it was sent, though, as he accepted, he also read it when preparing to give evidence in early 2019.

1450. Shortly after Mr Partridge's email, on 20 February 2018, Ms Baldock emailed him (cc. Mr Careless) to draw his attention to five items that she thought would raise questions with prospective bondholders:

i. Mr Thomson had been saying throughout April and May 2017 that LCF had security over assets worth £215 million. Now, however, Mr Thomson was saying in the accounts that LCF had held security over assets worth £284,725,329 as at 30 April 2017.

ii. The accounts referred to 6 employees with salaries of £87,000 and no directors' remuneration: "clients will ask how the directors made an income."

iii. "Where in the accounts does it show the [commission] payment to Surge".

iv. "Page 1 states that LCF only lent to 11 companies, we are quoting many more than this to our client (100s) – is there any further explanation to this?"

v. "It states all charges are held by LCF but there is no mention of the debenture, should there be?"

1451. On the same day other sales staff at Surge raised questions about LCF's lending and security. Mr Phillips collated the sales team's questions, including,

i. "How many companies do we currently lend to? We were told ~150 companies in June 2017";

ii. "Why would a company borrow from LC&F at our high rates?";

iii. "Due to the detail in the new accounts, a few questions may arise regarding the business model itself - with less active loans over longer periods of time, and a fee paid to surge, how do LC&F make a profit after paying high interest rates to bondholders?"

1452. These emails show that the audited accounts caused the sales team at Surge to have concerns about the truth and accuracy of the statements they had been making to potential investors about LCF's lending business.

1453. I also find that the reaction of the sales team shows that they thought that the number of borrowers from LCF was a material factor for potential investors. This was indeed self-evident, as it affected the diversification of the loan portfolio and the concentration of risk.

1454. I find overall that the EY accounts provided Mr Careless and Surge with a degree of comfort in relation to the level of security. But they also brought to the attention of the sales staff troubling information about what they had been saying about the number of borrowers and the concentration of risk. They also led to the sales staff asking searching questions about the business model of LCF and its ability to pay the Surge fees and interest to bondholders. These concerns were passed on to Mr Careless and Mr Russell-Murphy.

1455. Moreover, the accounts were not capable of giving the Surge Defendants any material comfort about LCF's business model and the representations that had been made to bondholders about it. The points made in relation to the PwC accounts at [1263] to [1266] above are repeated and apply equally here.

1456. Mr Phillips sent his questions to Ms Baldock, who forwarded them to Ms Venn.

1457. On 21 February 2018 Ms Venn sent an email to Mr Thomson raising these questions. She said that they were pleased to receive the accounts and that the security figure gave prospective investors significant comfort and aided them in their work. She said that "[o]n digesting the accounts it became apparent that the official statement that we relay to customers is now quite out of date." She referred to information sent by Mr Thomson in May 2016 saying that the average loan size was £75,000 and that LCF had made 121 loans. She said that that information was still in use by the account managers. She then referred to some of the questions raised by the account managers, but omitted Mr Phillips' final question about the business model (asking how LCF could pay bondholders and Surge from the interest from its loan book).

1458. Ms Venn's email to Mr Thomson left out Mr Phillips' last question because Mr Careless told her to delete it. When first asked about the omission, Mr Careless said that he was at a loss and could not recall. But an email from Ms Venn to Ms Baldock of 21 February 2018 explains that she had to water down the account managers' questions by taking out the last one because Mr Careless thought it was "too contentious". Mr Careless attempted to explain this in evidence by saying that Ms Venn and Mr Thomson did not get on and that the reason for removing the question was to do with their poor working relationship. That was not credible. I find that that he did not want to ask the question because he thought that it might disturb the commission arrangements.

1459. Later in the history, on 7 March 2019, Ms Venn said to Mr Careless that she had become aware of "key inconsistencies from the 2016 communication and the 2018 audit" and that she had raised these inconsistencies in her email to Mr Thomson on 21 February 2018.

1460. I find that Mr Careless understood at the time they were produced that the accounts (which showed a small number of borrowers and therefore implied that the lending was long term) had caused the account managers to raise serious questions about the entire business model of LCF, but that Mr Careless decided not to pursue the question as it was too contentious.

1461. Mr Thomson failed to respond to Ms Venn's email of 21 February 2018 in writing. As explained below, he wanted to speak by telephone instead. I find that that was because he did not want a record.

1462. At about the same time as these communications, Ms Venn told Mr Huisamen (on 20 February 2018) that Surge wanted to perform more due diligence on LCF and asked for the provision of quarterly management accounts or a breakdown of LCF's loan book and a statement of assets and liabilities. These requests were refused. Ms Venn told Mr Careless and Mr Russell-Murphy about this and said she was not happy.

1463. Ms Venn went back to Mr Huisamen (cc. Mr Careless, Mr Thomson and Mr Russell-Murphy) the following day, 21 February 2018. She stated (inter alia):

> "On the subject of on going monitoring, we are keen to have a formal process in place but this should not in any way be onerous or invasive. If our suggestion of a quarterly P&L and Balance Sheet is not your preference how about a quarterly statement of assets and liabilities as a more streamlined / light touch compromise?

> Why am I asking for this when we have the audited accounts signed off by Grant Thornton [sic] and you are FCA regulated? It is a best practice / safeguarding measure, we are now 9 months forward from the period the accounts document, we are averaging £10 to £12 million funds in to LCF on a monthly basis, the trend is showing that this can increase to circa £20 million a month. If our only update is on an annual basis, the business will have grown by more than 100% and the circumstances will have changed substantially. We are assisting this large volume of people to invest so we feel a moral obligation to make sure that the underlying investment continues to perform at an appropriate level to sustain LCFs obligation to investors."

1464. As just explained, Mr Thomson did not answer the questions raised by Ms Venn in the email of 21 February 2018. Ms Venn and Mr Russell-Murphy spoke to Mr Thomson on the telephone on 22 February 2018. Ms Venn and Mr Russell-Murphy seem to have made this call from Surge's offices: it was recorded, and there is a transcript:

    i. As to the amount of the loans and the number of borrowers, Mr Thomson told them, "Our loan book is 117 million off seven companies". This was still less than the 11 identified in the accounts.

    ii. As to the value of the security held by LCF in respect of these loans, Mr Thomson said that there was "a believability issue". The security was valued at £1bn, with loan to value at 11%. Mr Thomson said that would lead to "that's too good to be true" questions, so he was trying to restructure things "to the mid to high thirties is a nice comfortable level" which would be "nice and believable". Mr Thomson said, "You turn round a 117 million loan book and say our loan to value is 10 per cent, everyone's going to go, "Fuck off"."

1465. The next day, 23 February 2018, Ms Venn emailed Mr Partridge (cc. Mr Careless and Mr Russell-Murphy) to say: "Just to keep you in the loop, we had a call with Andy yesterday where we quizzed him ... He is going to put this in writing but on the phone he said: Current loans out: £117m; Security: £1b (yes billion, not a typo)."

1466. Mr Careless accepted in oral evidence that he was "taken aback" by the supposed security value of £1 billion and that it was discussed by him, Mr Russell-Murphy and Ms Venn. He said it was an enormous number. In cross-examination, despite being asked several times, Mr Careless declined to say whether he believed it or did not believe it. He would not answer. I find that he did not believe the figure of £1bn at the time. This reflected Mr Careless' belief that Mr Thomson was not to be trusted.

1467. Indeed, the £1 billion valuation for the security was soon superseded. On 20 March 2018 Mr Huisamen sent an email to Mr Russell-Murphy, Jo Baldock and Kerry Graham (cc. Mr Thomson), the attachment to which stated, "[t]he secured asset values as at the end February 2018 was c.£300m".

1468. Mr Careless referred to the EY accounts many times during his evidence. It became a refrain. He said that they gave him great comfort and that he could not have been expected to second guess them. This was reflected in the closing submissions made on his behalf.

1469. As explained above, I find that they gave Surge some comfort about the level of security held by LCF.

1470. On the other hand, the publication of the accounts gave rise to serious concerns among Surge's salesforce about the statements they had been making for some years about the number and type of LCF's borrowers and the diversification of the risk; and about the basic business model of LCF. They had been telling the public that LCF was a lender to hundreds of companies in the SME market. As already explained, Mr Careless already knew from a very early stage that there was only a small number of borrowers, all connected with Mr Golding and Mr Hume-Kendall. But the very small true number of borrowers was now being openly discussed within the sales team. The sales team were sufficiently alarmed by the news to raise this by email.

1471. I also find that Mr Careless understood that the accounts had caused the sales staff to raise some fundamental concerns about the viability of business model of LCF. Instead of pursuing these with Mr Thomson, Mr Careless asked Ms Venn to drop the relevant query. He was mostly concerned not to jeopardise the flow of commissions.

1472. Mr Careless also accepted in his oral evidence that after the EY accounts, he still thought there was a very serious risk of LCF going wrong. He said he was particularly concerned that LCF might go wrong in a way that gave rise to liability for Surge. He accepted that this was a real concern in his mind even after seeking the EY accounts.

1473. On 6 March 2018 Mr Partridge emailed Mr Careless about a meeting with a solicitor, Mr Kinch the next day. Mr Partridge said,

> "The thing that springs to mind is Surge's potential liability should LCF go wrong. Whilst there is less imminency as they have filed audited accounts I think it is still worth looking at. I have spoken to some lawyers who raised some relevant points -- we can discuss taking to the next stage."

1474. Mr Careless ultimately accepted in evidence that Mr Partridge was making a good point.

Mr Huisamen's statements about the business model on 20 March 2018

1475. The document circulated by Mr Huisamen on 20 March 2018, headed "Answers to AM questions" stated, in answer to the question "What is your average lending fee?": "We charge 1.75% on top of the bond interests and a 2% facilitation fee".

1476. This was another serious reason for concern. It was inconsistent with LCF's marketing materials, which said that LCF charged interest of 12% to 20% per annum on loans. Mr Huisamen's email suggested a lower rate than that. If correct, it would have implied that LCF was unviable.

1477. In mid-2018 Ms Venn and Mr Russell-Murphy discussed the possibility of LCF going bust. On 7 June 2018 Ms Venn told Mr Russell-Murphy that a sale of Surge to Mr Golding for £30 million was "currently floating around as a good plan". She said that it would be good to sell Surge before regulation prevented LCF from paying such high commissions to Surge. She added, "If they go bust we want to be well out of it. Leave now on a high. Put the money into all of the other businesses and grow them. The staff

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

1478. I find that Ms Venn and Mr Russell-Murphy probably discussed the risks of LCF becoming insolvent with Mr Careless.

Compliance audit of Surge by Thistle

1479. The Surge Defendants relied in closing on the fact that Surge was audited in 2018 by Thistle, a leading consultant in assessing FCA compliance.

1480. Thistle conducted a compliance visit on 4 June 2018. Their report, given in June 2018, gave an overall grading for the audit of "red" and the report stated that Surge was conducting regulated activity without authorisation.

1481. On 18 June 2018 Ms Venn emailed Mr Thomson and Mr Huisamen (cc. Mr Russell-Murphy and Mr Careless) to explain that Surge was conducting regulated activities and that it should cease those activities until Surge had become an AR.

1482. Mr Huisamen responded on 19 June 2018 to say,

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

1483. He followed up on the same day with a more detailed email setting out in short form why he believed Surge was not conducting regulated activity. Essentially, he said that there was no problem because Surge's employees were acting as agents of LCF.

1484. Ms Venn said she found this "most reassuring" and replied on 20 June 2018 to say, "Based on this we will carry on as we are."

1485. It appears that Surge was willing to ignore a detailed report from FCA compliance experts in favour of emails of this kind from Mr Huisamen. I find this was because Surge was anxious to continue earning its commissions.

1486. The email record in fact shows that Ms Venn, Mr Careless and Mr Russell-Murphy had sought reassuring emails from Mr Huisamen and had indeed suggested the content for them (including the agency point).

1487. When asked about the emails in evidence, Ms Venn explained that she often drafted wording for people, which they could decide whether to use. I find that the emails from Mr Huisamen were based on Ms Venn's suggestions, and they gave Surge a convenient justification for continuing to sell the bonds, despite Thistle's report. Indeed, in oral evidence, Ms Venn accepted that when she sent the email 20 June 2018, she in fact wanted to undertake more investigations. But that is not what she did: she said they would carry on as they were.

1488. For these reasons, I find that the Thistle audit actually gave Mr Careless no comfort at all about Surge's activities.

Further questions about LCF's business

1489. On 2 May 2018 a prospective bondholder raised a question about LCF's interest rates with Mr Blunden, one of Surge's sales team. He asked how LCF could be competitive when other funding companies are offering from 3% to 5% lending rate to their borrowers when LCF was charging 12% to 20%.

1490. Mr Blunden was unable to answer this question, so the potential investor sent it to Ms Maddock of LCF. She replied (cc. Dan Blunden and Ms Baldock) to say, "I believe that the rates of other funding companies that you are referring to are more mainstream banking and if a UK business is able to secure lending from them then they are not a target client of ours". The investor replied, "When you said those companies are not accepting by the mainstream financiers will be your company's clients, so are referring to those companies which having bad credit records and for that reason these companies or individuals are will to pay much higher lending rate to LCF in order to get funding?"

1491. These were straightforward and simple questions about LCF and its business model. They had been raised in the MSE posts quoted above. The obvious questions were, first, how LCF could find borrowers willing to pay this much and, secondly, how there could have been no defaults by such borrowers (who were bound to be bad credit risks). There is no evidence that this correspondence was sent to Mr Careless or Mr Russell-Murphy. But I find that these concerns were self-evident; and were obvious not just to the sales team at Surge, but also to Mr Careless and Mr Russell-Murphy, who were experienced businessmen. They did not follow up these obvious reasons for concern.

Contrast with Blackmore

1492. On 29 June 2018 Blackmore provided an update in respect of their financial affairs. Ms Venn commented to Mr Russell-Murphy, "the transparency they grant us is fantastic. LCF won't even say who the 11 borrowers are and Blackmore let us see their bank account and are happy to breakdown all of their costs for us. This is one reason why I feel very keen to support Blackmore". Mr Russell-Murphy replied, "You're right, they are very transparent compared to LCF".

1493. Shortly after this, on 3 July 2018, Ms Venn provided Mr Careless and Mr Russell-Murphy with information about a lender called Hadrian's Wall Capital, explaining that they "show transaction examples (without naming clients)." The contrast was obvious, and the unspoken question was why LCF was unwilling to do the same.

1494. I find that the answer was self-evident: Ms Venn, Mr Careless and Mr Russell-Murphy knew that Mr Thomson did not want to reveal that all of the loans were to Mr Golding's companies.

Further preparations for Westminster Corporate Finance

1495. From July 2018 work continued on WCF, as a backup to LCF. I find that this was happening because of continuing concerns about LCF's sustainability.

1496. On 19 July 2018 Mr Russell-Murphy emailed Mr Careless and Ms Venn (with the subject, "Update from SHK and Elten") saying, "They are keen to get WCF up and running asap."

1497. Mr Careless was given a draft IM for WCF. He said in evidence that he probably understood that the general idea was that it would be lending to SMEs which were finding it hard to obtain bank funding.

1498. Mr Russell-Murphy emailed Ms Baldock and Mr Careless on 14 August 2018 to say:

> "WCF needs to issue a loan to SHK/SG prior to going live and take on some decent security. This way the AM's can talk about XXXX amount of security protecting the investors."

1499. In oral evidence, Mr Careless accepted that he knew that the idea was that it would be making loans to companies connected with Mr Hume-Kendall and Mr Golding (though he said it might be lending to others too and he said that there would have to be security). He knew that Mr Hume-Kendall and Mr Golding were setting up WCF. Hence, he knew that the plan was that the same individuals would be on the lender and borrower side. He also knew that the plan was to market the company as a lender to the SME sector. Mr Careless did not cavil at the plan at the time. Indeed, I find that it conformed with his existing understanding of LCF.

1500. Mr Russell-Murphy subsequently became concerned about the links between LCF and WCF (including the appointment of Ian Sands as a director of the latter), which (in his eyes) undermined the whole project. Mr Russell-Murphy drew this concern to Mr Thomson's attention on 29 August 2018, saying,

> "The original reason for setting WCF up was to have a back up to LCF in the event of the company having any type of fund raising issue in the future. The structure of LCF and the business model links the two companies too closely together."

1501. Mr Russell-Murphy explained this concern to Mr Careless and Ms Venn on 29 August 2018:

> "The original reason for setting up WCF was to have a back up to LCF and a second pot for collecting funds … I have sent an email to Andy and Spencer with my concerns …
>
> The main problem is WCF is pretty much an exact copy of LCF … Ian Sands has 17 appointments with other companies which are mainly linked to LCF and have borrowed money from them – Lakeview, Waterside, Prime Resort development etc. If LCF was to run into problems in the future, WCF is so closely linked I can't see how it will not be effected."

1502. I find that Mr Careless and Mr Russell-Murphy understood that WCF was a close copy of LCF; that it was being set up to allow the flow of funds if LCF collapsed; that (like LCF) it was going to be promoted as a lender to the SME sector; that it would be controlled by Mr Hume-Kendall and Mr Golding; and that it would lend to businesses

connected with Mr Hume-Kendall and Mr Golding. I find that Mr Careless and Mr Russell-Murphy were assisted in the preparations and were content that Surge should market bonds issued by WCF, if it came to be needed.

1503. I also find that they knew that WCF was being pursued with urgency because there were serious concerns that LCF might fail.

Proposed property transaction in the Isle of Wight

1504. In around July 2018, View Property Group Limited ("View Property"), a company owned by Mr Careless, had an opportunity to buy a property on the Isle of Wight. The property was at Brading Marsh. Planning permission for 60 lodges was in the pipeline.

1505. View Property decided not to pursue this deal, but Mr Russell-Murphy took it to Mr Golding. Mr Golding proposed in late August that they should buy the property through an intermediate SPV and re-sell it for a profit to Prime RDL.

1506. Mr Careless said in his evidence that he knew that Prime RDL was connected to Mr Golding in some sort of fundamental way. He also knew that the proposal was that the purchase by Prime RDL would be funded by LCF.

1507. As a result of the close connections between Mr Careless and Mr Russell-Murphy in relation to this transaction, I find it is highly probable that Mr Russell-Murphy also knew this. They thought that Mr Golding was therefore involved in all aspects of the proposed transaction: in LCF as funder, in the proposed intermediate SPV and in Prime RDL, the end buyer.

1508. Mr Golding agreed to split the profit from the on-sale with Mr Careless and Mr Russell-Murphy. Mr Careless was very enthusiastic about this transaction. He thought that the profits would enable him to buy a helicopter.

1509. The property was initially held by a company, IOW Eco Reserve Limited ("IOW Eco"); the owners of IOW Eco were prepared to sell the shares in the company for £2.5 million.

1510. A plan was developed for an SPV called View Property SPV5 Limited ("View SPV5") to buy the shares in IOW Eco, and then immediately to sell the shares in View SPV5 to a company owned by Prime RDL at a large profit. I find that Mr Careless, Mr Golding and Mr Russell-Murphy knew that the intermediary company was not going to do anything to earn the profit – it did not have a pre-existing right and it was immediately going to transfer the property on to Prime RDL.

1511. On 10 October 2018 Mr Russell-Murphy messaged Mr Careless on WhatsApp to report that the sale price to Prime RDL would be £5 million, giving rise to a profit of £2.5 million, which would be divided between Mr Golding on the one hand and Mr Careless/Mr Russell-Murphy on the other. Mr Careless replied immediately to say, "YES … YES!!!!!".

1512. The shares in View SPV5 were transferred to Mr Barker (50 shares), Mr Careless (25 shares) and Mr Russell-Murphy (25 shares) to facilitate the profit share (with Mr Barker holding his shares on trust for Mr Golding).

1513. As already mentioned, the plan was that LCF was to lend the purchase money to Prime RDL. Mr Russell-Murphy commented to Mr Careless that they would have to "give LCF a big push" to raise the money. In his oral evidence, Mr Careless accepted that the "big push" was a sales drive to raise the extra money for LCF, so it could lend to Prime RDL to enable it to complete the Isle of Wight deal.

1514. Making sure that LCF had enough to lend to Prime RDL to consummate the Isle of Wight deal became a top priority for Mr Careless. Towards the end of October 2018 he said that if LCF's fundraising did not pick up, Surge would need to move LCF to the top of its BIR website in place of Blackmore for a few days.

1515. During this period (October - November 2018), Mr Careless and Mr Russell-Murphy were liaising closely with Mr Golding. All were members of an IoW WhatsApp group (though most of the messages between them are apparently no longer available to be disclosed). In late November 2018 Mr Russell-Murphy endorsed a suggestion from Ms Baldock that LCF be "switched back to the top of BIR until the end of November".

1516. The transaction was proceeding towards an exchange of contracts in December 2018 when the FCA intervened in LCF's business.

1517. Mr Careless accepted in oral evidence that he knew that the way LCF was involved in this transaction meant that money from the bondholders would be siphoned off for the personal benefit of Mr Golding.

1518. As already noted, Mr Careless also accepted that he knew that Prime RDL was connected to Mr Golding. Hence, he knew that Mr Golding was effectively on all sides of the deal.

1519. I find that Mr Careless was not surprised about the idea that LCF's funds (derived from bondholders) would be used in this way to provide a personal profit to Mr Golding. Nor did he object to it. Indeed, he stood to benefit personally and encouraged the transaction: he took active steps – Surge's "big push" – to maximise sales to bondholders so that the deal could happen.

1520. The intervention of the FCA and the subsequent entry of LCF into administration meant that LCF could no longer provide the purchase money to Prime RDL. The collapse of LCF also undermined the finances of Mr Careless and Mr Russell-Murphy, who had been so anxious for the deal to proceed so they could obtain their share of the profit.

1521. After the collapse Mr Mitchell said he hoped that Prime RDL would be able to raise the funds elsewhere so that the deal could proceed. However, the deal never completed.

1522. In March 2019, Mr Peter Tayler, the head of compliance at Northern Provident, asked Surge about some newspaper reports that had been published about the proposed Isle of Wight transaction. Mr Careless said in an email of 1 April 2019 (cc. Ms Venn) that Mr Russell-Murphy had suggested involving Mr Barker and Mr Golding, who were well connected in property development circles, and enlisted their help. He said that they had found a buyer and that they had agreed to split the broker fees. He said, "[t]hat was until we discovered that the proposed buyer was a borrower of LCF and I pulled out".

1523. That account of events was false. Mr Careless had known from an early stage in the proposed transaction that the ultimate buyer was going to be funded by LCF. As

explained above, he had been involved in the sales drive ("the big push") to ensure that LCF could provide the funding. The transaction was going to go ahead when the FCA intervened. Mr Careless would have known these statements were false and misleading.

1524. In his written evidence, Mr Careless claimed that he did not read the email of 1 April 2019, which had been drafted for him by Ms Venn before he sent it, because he was at hospital arranging his wife's C-section and "the urgency and gravity of the situation meant that I would just have copied and pasted the email and sent it with minimal review or changes." In his oral evidence, he admitted that the appointment at hospital was a routine ante-natal appointment, and that the elective C-section was scheduled to take place in around four months. His statement was therefore incorrect. There is consequently no reason why he would not have read this email before sending it.

1525. Indeed, documents disclosed during the trial show that he saved Ms Venn's draft on his iPhone. He ultimately said in his oral evidence that he could not guarantee that he had read it.

1526. I reject Mr Careless's evidence that he had not read the draft email before it was sent. This was an important inquiry and I find that he read the draft and approved it. In any case, Ms Venn must have obtained the information in the draft email from Mr Careless. I find that the email contained a deliberate lie.

1527. To summarise, Mr Careless and Mr Russell-Murphy knew that the Isle of Wight deal involved Prime RDL purchasing an asset worth £2.5 million for £5 million using LCF's money, with £2.5 million to be paid as profit to Mr Golding, Mr Careless and Mr Russell-Murphy. They also knew that Prime RDL was connected in some way to Mr Golding, so that Mr Golding was effectively on both sides of the deal. Mr Careless and Mr Russell-Murphy were anxious for the deal to complete and did what they could to ensure that LCF raised enough to fund the ultimate purchase by Prime RDL.

LCF's collapse

1528. As explained above, the FCA raided LCF's premises on 10 December 2018.

1529. Mr Careless heard the news and sent a message to Ms Venn on the same day, asking, "What do you think has happened?".

1530. She replied, "[i]f I was the FCA I would have a massive issue with only 11 borrowing companies … LCF is suspicious because only 11 borrowing companies doesn't look good." This was a reference back to the EY accounts. It is revealing that Ms Venn's immediate, unguarded reaction was about the small number of borrowers and that she called this "suspicious".

1531. On 12 December 2018 Ms Venn sent a text message to Mr Careless, saying, "[n]o more business with people we don't 100% trust or like". Mr Careless said, "100% agreed."

The claims for fraudulent trading

Relevant legal principles

1532. Section 246ZA of the Insolvency Act 1986 provides as follows:

> "(1) If while a company is in administration it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.
>
> (2) The court, on the application of the administrator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are to be liable to make such contributions (if any) to the company's assets as the court thinks proper."

1533. The wording is in all material respects the same as that for liquidations (at section 213 of the 1986 Act) and the cases describing the effect of section 213 (and its similarly worded predecessors) are therefore equally applicable to section 246ZA.

1534. In *Morris v State Bank of India* [2003] BCC 735, Patten J described the three elements of a fraudulent trading claim at [11]:

> "There are therefore three elements to be established: (1) that the business of the company in liquidation has been carried on with intent to defraud the creditors of the company or for any other fraudulent purpose; (2) that the defendant sought to be made liable … participated in the carrying on of the business of the company in that manner; and (3) that it did so knowingly: i.e. with knowledge that the transactions it was participating in were intended to defraud the creditors of the company or were in some other way fraudulent."

1535. As to the first element, in *Re Augustus Barnett & Son Ltd* (1986) 2 BCC 98,904 at p. 98,907, Hoffmann J said:

> "…this in my judgment involves a finding that someone has done an act which can be described as carrying on some business of the company and that in doing so he had an intent to defraud. Equally, the words "any business of the company has been carried on … for any fraudulent purpose" must mean that someone carrying on the business had a fraudulent purpose in doing so."

1536. A business may be found to have been carried on with intent to defraud creditors even if only one creditor has been defrauded by a single transaction: *In re Gerald Cooper Chemicals Ltd* [1978] Ch 262. But it does not follow that whenever a fraud is committed against a creditor in the course of carrying on business, the business is being carried on with the intent to defraud creditors: *Morphitis v Bernasconi* [2003] Ch 552, per Chadwick LJ at [46].

1537. As to the intent to defraud creditors or fraudulent purpose, the case-law does not seek to define or delimit the concept of fraud.

1538. Liability requires that a person has acted dishonestly: *Bernasconi v Bennett* [2000] BCC 921, per Laddie J at [13]-[14], citing the decision of Maugham J in *Re Patrick and Lyon Ltd* [1933] Ch 786 at 790.

1539. In *Re William C Leitch Bros Ltd* [1932] 2 Ch 71, Maugham J said at p. 77:

> "If a company continues to carry on business and to incur debts at a time when there is, to the knowledge of the directors, no reasonable prospect of the creditors ever receiving payment of those debts, it is, in general, a proper inference that the company is carrying on business with intent to defraud."

1540. In *R v Grantham* [1984] QB 675, the Court of Appeal dismissed an appeal against a direction given to a jury that there could be an intent to defraud if someone "obtains or helps to obtain credit or further credit when he knows there is no good reason for thinking funds will become available to pay the debt when it becomes due or shortly thereafter." At p. 683, Lord Lane CJ said:

> "If further authority is required that such actions may amount to an intent to defraud, it is to be found in *Reg. v. Sinclair* [1968] 1 WLR 1246. In that case the trial judge had directed the jury, at p. 1249:
>
> > "It is fraud if it is proved that there was the taking of a risk which there was no right to take which would cause detriment or prejudice to another. ... you have to be sure that it was deliberate dishonesty ..."
>
> The Court of Appeal (Criminal Division) approved that direction. In *Reg. v. Allsop* (1976) 64 Cr.App.R. 29, the Court of Appeal (Criminal Division) held that a person is guilty of fraud if he intends by deceit to induce a course of conduct in another which puts that other's economic interests in jeopardy, even though he does not intend that actual loss should ultimately be suffered by that other."

1541. The words "or for any other fraudulent purpose" are broad in reach. In *R v Kemp* [1988] QB 645, the Court of Appeal stated at p. 650:

> "Turning from that back to the section, the wording "or for any fraudulent purpose" in a section could not be wider. The question is whether that width is intentional. It clearly did not surprise Lord Denning M.R. for in *In re Cyona Distributors Ltd* [1967] Ch 889, 892 he said of the section that it was deliberately in wide terms to enable the court to bring fraudulent persons to book, and added that the words of the section were to be given their full width."

1542. The Court of Appeal rejected the argument that the section was confined to creditors and that it excluded potential creditors. Henry J continued (at p. 655):

> "If the words add anything to the section, they must apply to potential creditors as being the nearest thing to creditors and therefore they must apply to customers".

1543. As to participation, there is no requirement that the defendant must exercise a controlling or managerial function in the company. In *Bilta (UK) Ltd (in liquidation) and others v Tradition Financial Services Ltd* [2023] EWCA Civ 112, Lewison LJ said at [118]:

> "I should make it clear, however, that nothing I say must be taken as setting the outer limits of the scope of section 213. All that we are asked to decide is whether a person cannot fall within the scope of section 213 unless he has a controlling or managerial function within the company. Whether an "outsider" can be said to be party to the carrying on by a company of a fraudulent business may well be a question of fact and degree which requires careful analysis."

1544. Lewison LJ also explained at [92] that to be liable under the section the defendant must have been party to the carrying on of a fraudulent business; and not merely party to an incidental fraud committed by the company. He referred to a dictum of Oliver J in the unreported case of *Re Murray-Watson*, that where a director of a second-hand car dealership lies to a customer about the age of a car, he could not be said to be carrying on the company's business for a fraudulent purpose. At [112], Lewison LJ made the same point: "it is a precondition of liability that business has been carried on with fraudulent intent; and that incidental frauds committed in the course of business are not enough."

1545. At [93] Lewison LJ said:

> "The extent to which a counterparty must be involved in the carrying on of the fraudulent business may depend upon the facts. Suppose that a manufacturer regularly supplies counterfeit designer clothes to a retailing company, knowing that the retailer will pass them off as genuine. It is, in my judgment, no misuse of language to describe the manufacturer as "party to the carrying on" of a fraudulent business, even though he exercises no managerial or controlling role within the retailing company; and the manufacturer may have other business activities that are not fraudulent. The manufacturer knows about the retailer's fraudulent business and is actively participating in it in the sense of furthering and facilitating it."

1546. For a person to be a participant, some positive acts of assistance are required. In *Maidstone Buildings Limited* [1971] 1 WLR 1085, Pennycuick VC considered (at p. 1092) that participation required "some positive steps of some nature".

1547. In *Re Augustus Barnett & Son Limited* at 98,907, Hoffmann J said:

> "It is a necessary condition of the court's power to make an order under this section that it appears that "any business of the company has been carried on with intent to defraud".

> Transferring the passive to the active voice, this in my judgment involves a finding that someone has done an act which can be described as carrying on some business of the company and that in doing so he had an intent to defraud. Equally, the words "any business of the company has been carried on … for any fraudulent purpose" must mean that someone carrying on the business had a fraudulent purpose in doing so. Once this condition has been satisfied, the court may impose personal liability on any persons who were knowingly "party to" the carrying on of the business "in manner aforesaid". The words "persons … party to" may be wide enough to cover outsiders who could not be said to have carried on or even assisted the carrying on of the company's business but who nevertheless in some way participated in the fraudulent acts."

1548. A person may participate in the fraudulent trading by means of a transaction which is not itself fraudulent or deceitful, but which is known to the participant to be part of the process by which a company carries on fraudulent trading: see *Bilta (UK) Limited (*in *liquidation)* [2020] EWHC 546 (Ch) at [170] and [192]. Snowden J concluded that a person who turned a "blind eye", whilst causing the company to enter into trades which facilitated the fraudulent trading of the company, participated in the fraudulent trading of the company.

1549. Accepting money which is known to have been procured by the fraudulent carrying on of business may be sufficient to constitute participation. In *Re Gerald Cooper Chemicals Limited (in Liquidation)* [1978] 1 Ch 262, Templeman J considered (at [68]) that a person accepting payment of a debt owing which he knew to have been obtained by fraud could be liable for fraudulent trading:

> "In my judgment, a creditor is party to the carrying on of a business with intent to defraud creditors if he accepts money which he knows full well has in fact been procured by carrying on the business with intent to defraud creditors for the very purpose of making the payment. [Counsel] said truly that section 332 creates a criminal offence and should be strictly construed, but a man who warms himself with the fire of fraud cannot complain if he is singed."

1550. The third element is that the defendant knew that the transactions in which he or she participated were intended to defraud the creditors of the company or were in some other way fraudulent.

1551. To be knowingly party to fraudulent trading, it is not necessary for a person to know the details of the fraud or how it was carried out; and knowledge here includes blind-eye knowledge. In *Morris v Bank of India* [2004] BCC 404, Patten J said at [13]:

> "The liquidators have to show that BOI (through its relevant officers and employees) knew that the six transactions (or one or more of them) were being entered into either to defraud the creditors of BCCI or for a fraudulent purpose. They did not have

> to know every detail of the fraud or the precise mechanics of how it would be carried out, but clearly they did have to know, either from their own observation of what was being done or from what they were told, that BCCI was intent on a fraud. Knowledge, for this purpose, means what it says. There must have been an actual realisation on the part of BOI that BCCI would, or was likely to, engage in false accounting. A failure to recognise the truth of what was going on is not enough, however obvious that may now seem to have been. The relevant knowledge also has to be contemporaneous with the assistance that was given at the time by entering into the various transactions. Subsequent knowledge based on hindsight is not enough, nor is negligence the test of liability. [Counsel] emphasised in his closing submissions that it is irrelevant whether BOI is open to criticism for slackness or negligence, however gross. The only issue is whether it knew at the time that it was participating in a fraud. I agree with that. But both sides accept that knowledge, for these purposes, includes so-called blind-eye knowledge, which exists when the party in question shuts its eyes to the obvious because of a conscious fear that to enquire further will confirm a suspicion of wrongdoing which already exists."

1552. It is enough that the participant had relevant knowledge that their conduct was connected with a fraud. Where a participant assists in a fraud, such as by making arrangements which are known to conceal what is happening from a third party, the participant takes the risk that he or she is part of a fraud, the details of which they do not know. Lewison J explained this in the context of participation in VAT fraud in *HMRC v Livewire Telecom Limited* [2009] EWHC 15 (Ch) at [103]. The same principles have been applied to dishonest assistance in a breach of fiduciary duty, see *Agip (Africa) Ltd v Jackson* [1990] Ch. 265, at p. 295:

> "In my judgment, however, it is no answer for a man charged with having knowingly assisted in a fraudulent and dishonest scheme to say that he thought that it was "only" a breach of exchange control or "only" a case of tax evasion. It is not necessary that he should have been aware of the precise nature of the fraud or even of the identity of its victim. A man who consciously assists others by making arrangements which he knows are calculated to conceal what is happening from a third party, takes the risk that they are part of a fraud practised on that party."

1553. Another illustration of the principle in a VAT fraud case was *Megtian (in Administration) v Revenue and Customs Commissioners* [2010] EWHC 18 (Ch). Briggs J said at [37]-[38]:

> "37. In my judgment, there are likely to be many cases in which a participant in a sophisticated fraud is shown to have actual or blind-eye knowledge that the transaction in which he is participating is connected with that fraud, without knowing, for

> example, whether his chain is a clean or dirty chain, whether contra-trading is necessarily involved at all, or whether the fraud has at its heart merely a dishonest intention to abscond without paying tax, or that intention plus one or more multifarious means of achieving a cover-up while the absconding takes place.
>
> 38. Similarly, I consider that there are likely to be many cases in which facts about the transaction known to the broker are sufficient to enable it to be said that the broker ought to have known that his transaction was connected with a tax fraud, without it having to be, or even being possible for it to be, demonstrated precisely which aspects of a sophisticated multifaceted fraud he would have discovered, had he made reasonable inquiries. In my judgment, sophisticated frauds in the real world are not invariably susceptible, as a matter of law, to being carved up into self-contained boxes even though, on the facts of particular cases, including Livewire, that may be an appropriate basis for analysis."

1554. The same principles have been applied to claims under section 213 of the 1986 Act. In *JD Group Limited* [2023] EWHC 775 (Ch), the court at first instance had held that the respondent had knowingly participated in the company's fraud. The respondent appealed, saying that he did not have sufficient knowledge of the elements of the fraud. Sir Anthony Mann (sitting as a Judge of the High Court) dismissed the appeal. He said that it was not necessary to identify which fraudulent details the participant was aware of. He referred to *Morris v Bank of India* at [13] and *Alpha Sim v CAZ Distribution Services* [2014] EWHC 207 (Ch) at [61].

1555. The requirements for establishing blind-eye knowledge were authoritatively stated in *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd (The Star Sea)* [2003] 1 AC 469 per Lord Scott at [116]:

> "In summary, blind-eye knowledge requires, in my opinion, a suspicion that the relevant facts do exist and a deliberate decision to avoid confirming that they exist. But a warning should be sounded. Suspicion is a word that can be used to describe a state-of-mind that may, at one extreme, be no more than a vague feeling of unease and, at the other extreme, reflect a firm belief in the existence of the relevant facts. In my opinion, in order for there to be blind-eye knowledge, the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe."

1556. The term dishonesty is not used in the statute. But, as Patten J explained in *Morris* at [12], fraudulent trading of a company connotes actual dishonesty. He explained that it is also hard to see how, in practice, a party can consciously participate in transactions which are known to be fraudulent without that constituting dishonesty.

1557. It is necessary to show that there was either subjective intent to defraud, or a reckless indifference as to whether or not the creditors were defrauded: *Bernasconi v Bennett* [2000] BCC 921 at [13]-[14].

1558. The two-stage test for dishonesty is that the fact-finding tribunal must ascertain subjectively, the defendant's actual state of knowledge or belief as to the facts, and whether, in the light of that state of mind, the conduct was honest or dishonest applying the objective standards of ordinary decent people: see *Ivey v Genting Casinos UK Ltd* [2018] AC 391 at [74].

1559. The court may have regard to circumstantial evidence in finding facts at trial. The image is sometimes given of a rope composed of several cords: see *R v Exall* (1866) 4 F&F 922, 929. In *Arif (trading as Trinity Fisheries) v HMRC* [2006] EWHC 1262 (Ch) at [22], Lewison J said that there can be no valid criticism of a tribunal which considers that one piece of evidence, while raising a suspicion, is not enough on its own to find dishonesty; but that several such pieces of evidence, taken cumulatively, lead to that conclusion.

1560. As to remedies, where a person is found liable for fraudulent trading in relation to a company in administration, the court may order them to make such contributions to the company's assets as it thinks proper: section 246ZA(2).

1561. There must be a nexus between the loss caused to the company's creditors by the fraudulent trading and the contribution ordered: *Morphitis v Bernasconi* [2003] Ch 552, per Chadwick LJ at [53]. He said that:

> "… an obvious case for contribution would be where the carrying on of the business with fraudulent intent had led to the misapplication, or misappropriation, of the company's assets. In such a case the appropriate order might be that those knowingly party to such misapplication or misappropriation contribute an amount equal to the value of assets misapplied or misappropriated. Another obvious case would be where the carrying on of the business with fraudulent intent had led to claims against the company by those defrauded. In such a case the appropriate order might be that those knowingly party to the conduct which had given rise to those claims in the liquidation contribute an amount equal to the amount by which the existence of those claims would otherwise diminish the assets available for distribution to creditors generally; that is to say an amount equal to the amount which has to be applied out of the assets available for distribution to satisfy those claims."

1562. A starting point in determining the size of the contribution may be the loss caused to the company's creditors i.e. the net deficiency in the administration estate: see *Re Tradestar Limited* [2018] EWHC 3595 (Ch), per Fancourt J at [21].

1563. In assessing what contribution to require from defendants liable under the section, the court may consider each defendant separately or may hold defendants liable on a joint and several basis: see *Re Overnight Ltd* [2010] BCC 796 at [30]-[32].

1564. With these principles in mind, I turn to the three elements identified in *Morris*.

1565. For simplicity in the following sections, the term "FCOB" is shorthand for the first of these: the concept of carrying on business with intent to defraud creditors or for any other fraudulent purpose.

Was the business of LCF carried on with intent to defraud the creditors of the company or for any other fraudulent purpose?

The Claimants' case that there was FCOB by LCF

1566. The Claimants contend that LCF operated as a fraudulent scheme by which money was raised from the sale of bonds and misappropriated. They contend that there were three aspects to this: first, raising funds from bondholders through systematic and fundamental misrepresentations; secondly, operating a Ponzi scheme; and, thirdly, misappropriating the funds invested by bondholders.

1567. Expanding this summary, the Claimants contend, first, that LCF induced bondholders to transfer sums to LCF on the basis of numerous false representations and thereby placed the economic interests of those bondholders in jeopardy. The Claimants say that the bondholders were told that their investments were secure and subject to various protections, when in reality, this was not the case. LCF's representations were false, with the consequence that bondholders who invested their sums were being deceived into paying their sums over to LCF. The Claimants say that the picture painted by LCF's representations differed from the reality. LCF in fact lent funds exclusively to a small number of borrowers connected to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding without conducting any financial due diligence, and without putting in place adequate security. They say that LCF did not carry on a genuine business, and there was no real prospect that LCF would ever be able to repay its bondholders. Instead, LCF was involved in providing loans which were designed to fund, and did in fact fund, payments under a series of uncommercial transactions (principally the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA, and the LPT SPA) which were plainly contrary to LCF's own interests.

1568. The Claimants contend, secondly, that LCF operated as a Ponzi scheme. They say that LCF used sums received from new bondholders in order to discharge the interest payments to existing bondholders. LCF had no source of income other than sums from new investors, which were often transferred through connected borrowing companies before being repaid to LCF. The borrowers did not have businesses which were generating profits (let alone any turnover) which could fund payments to LCF. As a result, there was no means by which LCF could meet the liabilities it was incurring to bondholders, but LCF continued to accept their investments in order to meet its obligations to existing bondholders. LCF was therefore inherently unstable and doomed to collapse.

1569. The Claimants contend, thirdly, that a large part of the money invested by bondholders was misappropriated from LCF. LCF (through the loans to connected borrowers) funded payments under a series of uncommercial transactions (the SPAs) the purpose and effect of which was to justify the misappropriation of LCF's assets into the hands of Mr Thomson, Mr Hume-Kendall, Mr Barker, and Mr Golding. The Claimants contend that

this involved a series of loans to the connected borrowers which could not conceivably be justified on commercial terms, and which left LCF with negligible security and no realistic prospect of being repaid. The economic interests of LCF's creditors (the bondholders) were thereby placed in jeopardy, and this was dishonest.

1570. There are overlaps between these three sets of allegations. For instance, part of the case under the misrepresentation heading is (broadly) that LCF was presented as a diversified lending business, making commercial returns from its borrowers, and that these had been and would be the source from which the bondholders would be paid their interest and principal. Part of the Claimants' case is that no returns for LCF were in fact generated (or ever likely to be generated) from the loans to the borrowers, and that all of the interest and principal paid to the bondholders came from new investors' money. This is part of the Ponzi scheme allegation. Another part of the misrepresentation case is that the picture presented by LCF was untrue because substantial portions of the amounts invested by bondholders were in fact being paid out to the First to Fourth Defendants under the uncommercial SPA transactions (as was intended by LCF) and were therefore not available to the borrowing companies to generate resources to pay back the interest and principal under the loans. This is part of the misappropriation case.

1571. Despite these overlaps, it is convenient to analyse the conduct of LCF's business by reference to the three sets of allegations made by the Claimants.

1572. Counsel for Mr Thomson submitted that there was a basic legal flaw in the case advanced by the Claimants. Mr Thomson said that the various kinds of conduct complained about, the backdating of documents, the connections between Mr Thomson and the controllers of the London Group, and so forth are only relevant to the extent that they allow the Claimants to establish that Mr Thomson's conduct operated on bondholders' ability to recover the sums due to them. The Claimants accepted that any award of relief for fraudulent trading depends on showing a nexus between the fraudulent conduct established and the award of compensation. But beyond this, it is not a separate element. In my judgment the elements of the statutory claim have been accurately stated in the cases referred to above. That is the approach I shall take.

Attribution of knowledge to LCF

1573. The knowledge of Mr Thomson falls to be attributed to LCF. Mr Thomson was a de jure director of LCF from 15 August 2013 onwards, and was held out as the CEO of LCF at all material times, including in LCF's many marketing materials which were presented to prospective bondholders.

1574. As explained below, I also find that Mr Golding was a shadow director of LCF. I find that his knowledge falls to be attributed to LCF.

Was there fraudulent conduct of business by LCF misrepresenting its business to bondholders?

1575. This is the first set of allegations advanced by the Claimants.

1576. I have found that a number of representations were made by LCF to members of the public (see [393] to [425] above).

1577. The next issue is whether the representations that have been established were false, to the knowledge of LCF.

1578. The first representation is that LCF would not lend more than 75% of the value of its security over assets; and that it had security of £215 million in May 2017 and £685 million in October 2018.

1579. I am satisfied that this was false, and that Mr Thomson knew this. As already explained:

i. The borrowing companies were unable to grant sufficient security to LCF because their assets were worth very significantly less than the loans. I have already made findings in this regard about the value of the relevant borrowing companies' interests in The Beach, The Hill, Paradise Beach and Lakeview. For the detailed reasons already given, these assets either had no value or a value significantly lower than that used by LCF in its calculations.

ii. Mr Thomson knew that The Hill was worthless as it was held on trust for the El Cupey investors. He knew that there was no free equity in The Hill and that the value of the site, other than for the Sanctuary investors, was nil.

iii. Mr Thomson knew that The Beach was worthless as security to LCF. Mr Thomson knew that Tenedora did not own any land at all at The Beach until 2017, and even after that, when some plots began to be acquired, Mr Thomson knew that Tenedora never came to own all of the parcels of land which would enable the development of The Beach. Mr Thomson also knew that the valuation of the site on which he appears to have acted was, in any event, expressly not to be relied upon for the purposes of loan security. He knew from his banking background that no honest and reasonable lending company would rely on it as a basis for lending.

iv. Mr Thomson knew that Paradise Beach was worthless as security to LCF. Mr Thomson knew that CV Resorts held only a contract to acquire Paradise Beach. He also knew that the contract involved paying very substantially more than the asset was worth in order to acquire it. Mr Thomson knew at all material times that CV Resorts had never acquired land at Paradise Beach that could serve as loan security in any event.

v. Mr Thomson knew that the Lakeview site had very limited value as security to LCF. He knew that this was far less than the inflated value attributed to it in LCF's spreadsheets. Mr Thomson knew about the real value of the Lakeview site: he knew about the purchase price and the terms of the LCCL SPA, under which LCCL had acquired the Lakeview site for approximately £1.5 million, and that the Lakeview site had been valued at approximately £4 million by Savills and GVA. Mr Thomson knew that the high figures used for the purposes of LCF's security value could not be justified. Mr Thomson knew that the other valuations obtained in relation to the Lakeview site were flawed and based on assumptions which he knew were inaccurate. He knew from his banking background that no honest and reasonable lending company would rely on these as a basis for lending.

vi. Mr Thomson knew that LCF was lending to companies which had been recently incorporated and did not have any assets. Mr Thomson knew in particular that the

"support" companies had no assets. Mr Thomson knew that, despite their lack of assets, LCF was lending to those companies by allocating to them L&TD's outstanding debts, and that the purpose of this arrangement was to allow GRP to be sold debt free to enable GRP's subsidiaries to borrow afresh from LCF.

vii. Mr Thomson also knew that there was no adequate security for the liability owed by Atlantic Petroleum Support. He knew that there had been no effective assignment of LOG's rights in relation to Atlantic Petroleum to be used as security for LCF's lending. He also knew that the total value of LOG's rights which were purportedly assigned to LCF for this purpose were very significantly below the amount of lending by LCF. He knew that LOG was continuing to treat the benefit of the loan to Atlantic Petroleum as its own property. Mr Thomson therefore knew that the liability owed by Atlantic Petroleum Support to LCF was unsecured.

viii. As to the interests of LOG in IOG, I accept the expert evidence of Mr Osborne. In paragraph 5.46 of his report of 29 September 2023 he gave high, low and midpoint values for these interests at various dates. Taking his high values, the value of the asset was always significantly less than the amount of the lending to LOG.

ix. There was also no security over the preference shares in GRP because no such shares were ever issued. Moreover, Mr Thomson thought that no preference shares had been issued to London Group (the party which had purported to grant the security over them). His evidence was that preference shares had been issued to the individuals.

1580. The second representation I have found to have been made is that LCF was performing robust due diligence before making any loans, such that it was satisfied that borrowers would be able to repay the loans, and that LCF only lent to creditworthy borrowers.

1581. I am satisfied that this was false, to Mr Thomson's knowledge:

i. There is no documentary evidence showing that LCF conducted any due diligence at all.

ii. LCF did not conduct a financial review of any borrower before making a decision to lend.

iii. LCF did not conduct any ongoing monitoring of borrowers. LCF did not conduct an appraisal of the past three years of financial information. Indeed, in many cases the relevant borrowing companies were incorporated just before the loans were made.

iv. LCF did not require or obtain realistic repayment proposals from any borrowers.

v. LCF did not arrange for the appraisal of a borrower's property assets by an independent surveyor; there were no "verified" valuations of the security. Such valuation documents as existed were not current and were not addressed to LCF. For reasons given above, such valuations could not reasonably have been relied on by a genuine and honest commercial lending business.

vi. LCF did not have strict lending criteria and it did not invite applications for lending from the market.

vii. More generally, any reasonable investor reading LCF's marketing materials would have concluded that LCF had a lending department devoted to inviting and assessing loan applications from the SME sector. It had no lending department. I am satisfied that Mr Thomson was in charge of all lending decisions; and that he did not conduct any of the steps just listed.

viii. Mr Thomson knew each of the facts listed above.

1582. The third established representation is that LCF was lending on commercially competitive terms to numerous unconnected SME borrowers pursuant to arm's length transactions.

1583. I am satisfied that this was false, to Mr Thomson's knowledge:

i. LCF never lent to unconnected borrowers. All of its lending was (as Mr Thomson accepted in evidence) to a small group of closely associated borrowers. Mr Thomson accepted that he was responsible for the lending.

ii. There were continuing connections between the borrowers and LCF. Mr Thomson retained a 5% beneficial interest in the London Group of companies and Mr Golding had a strong continuing influence over the business of LCF.

iii. The number of borrowers was very small, and was concentrated in a single connected group.

iv. LCF was not lending to the SME sector. It was advancing sums to companies connected with Mr Thomson's close business associates or, in one case, to Mr Golding personally.

v. LCF's loans were not on commercial terms. I specifically find that commercial borrowers in the SME market would not have been willing to borrow on terms requiring them to pay an additional 33% over the life of the loan (under the grossing up arrangements) as well as the 2% arrangement fee and contractual interest. In this regard, market rates of interest for borrowers at the time were in single digits (see [841] above).

vi. I also find that a genuine commercial lending business would not have been willing to allow the proceeds of loans to be applied by the borrowers in paying the consideration under the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA and the LPT SPA, rather than being used as working capital in potentially income-generating businesses capable of generating returns for LCF.

1584. Mr Thomson said in his evidence that he thought there was nothing wrong in lending to the companies associated with Mr Golding and Mr Hume-Kendall. He said that he knew them and that the businesses needed funding. He said that LCF was a start-up and that he had planned to expand the borrower base to unconnected ones. He said that that was going to be a task for 2019, which was going to be transformative.

1585. I make the following findings about this:

i. Mr Thomson knew that LCF was representing to bondholders that it was going to lend to the SME sector. It was telling them that their funds would be invested in arm's length commercial lending transactions.

ii. He knew that there was an obvious difference between lending to a small, tightly associated, group of companies on the one hand, and lending across a diversified class of third party borrowers on the other. He was a former banker, who understood the spreading of risk.

iii. He knew why bondholders were not being told about the close relationships of the borrowers. Indeed, he accepted in his evidence that when he told Surge there were 120 borrowers this was misleading. He did not want investors to know the truth because he knew they would not have invested in the bonds.

iv. Mr Thomson's evidence on this point was based on the false premise that the lending was for the purpose of genuine commercial transactions to businesses which would then be able to repay interest and principal from their own resources. But he knew that a large proportion of the money raised from bondholders was in fact being paid out to himself and the individuals for their own personal use or was being used to repay earlier investors, and was not going into profit-generating enterprises.

v. Mr Thomson's evidence was based on the false premise that, owing to the "buy-out" agreement, he no longer had a real interest in the borrower group after July 2015. But that did not happen, and he continued to have (at least) a 5% stake in the borrower group.

1586. Mr Thomson also said that the practice of lending only to borrowers connected with Mr Hume-Kendall, Mr Barker or Mr Golding was "not the plan at the outset" but that the company "ran very quickly". This evidence was revealing. It contained an implicit acceptance that LCF was being presented in the IMs as a commercial lender to SMEs. But the problem for Mr Thomson (even accepting his evidence at face value) is that LCF continued in all of the bond issues to make the same representations. Moreover, the communications with bondholders purported to describe the business as it was when those communications were issued (not about hopes for the future); and none of the IMs explained that its business currently consisted of lending to a small group of associated companies. On the contrary, they all described LCF as a commercial lender to the SME market.

1587. In any event, I reject Mr Thomson's evidence that lending to the associated companies was not the plan at the outset. This was indeed the plan. LCF was created as a vehicle to generate funding for a small associated group of individuals. The fact that by the end of 2018 LCF had not lent to any non-connected borrower is consistent with this.

1588. Mr Thomson also contended that bondholders were told in terms that borrowers would be sourced through the contacts of the directors. He suggested that was sufficient disclosure. I reject that contention. LCF told investors that it had a network of relationships with professionals in the financial, accounting and legal professions and that it was confident that, using these relationships, it would be able to source additional

opportunities to lend to SMEs on commercially competitive terms. That is far from disclosing to bondholders that LCF would be lending to a small group of companies run by Mr Thomson's business associates, and in which he would continue to have a 5% interest.

1589. Counsel for Mr Thomson also submitted in closing that LCF's communications with the borrowing companies demonstrated that it was carrying on a normal, commercial, lending business. Mr Thomson relied, for instance, on a letter to Mr Hume-Kendall dated 3 March 2016 concerning a possible investment in the Great Bear oil field. The letter is formal in tone. It sets out a description of LCF's business and the kinds of terms on which LCF might be prepared to lend. Communications of this kind give no support to Mr Thomson's case. Mr Hume-Kendall had of course been involved in setting up SAFE and understood its operations. As the letter itself recorded, there had already been a loan to L&TD, in which Mr Hume-Kendall was interested. The circumstances in which the letter was written were not addressed at the trial and no weight can be placed on it.

1590. Another example is an email to Mr Meikle dated 24 November 2015 having something to do with LCF lending in relation to a bloodstock debenture. Again, there was no evidence about the circumstances of this email, and, in any event, there is no evidence that this communication led to an actual loan.

1591. A third example is a letter dated on its face 1 December 2017 to LOG about the increase in the facility to £50 million. This was created in March 2018 and backdated (see [642] above). It is not evidence of LCF running a regular lending business.

1592. More generally, the existence of some apparently formal documents of this kind is immaterial. There were indeed many formal-looking documents, including the loan agreements, security documents, side-letters and so forth. They were often prepared with the assistance of experienced solicitors. Their existence indicates nothing either way about the underlying transactions of LCF or their propriety.

1593. The fourth established representation is that no sums had been or would be advanced to any borrower before the execution of a legally binding loan agreement between LCF and the borrower, and the execution of valid security documents supporting the borrowing.

1594. I am satisfied that this was false, to Mr Thomson's knowledge. As already explained:

i. Funds were often advanced to borrowers before any loan agreement was even put in place or security granted. Examples are the loans to L&TD, to Mr Golding personally, and to LOG. LCF indeed often engaged in the backdating of documents to seek to pretend that the agreements had been in place earlier. This is detailed above.

ii. When LCF did enter written agreements with borrowers, it often lent funds well in excess of the facility limits. This was the case with the loans to Sanctuary PCC, L&TD and LOG. Again, documents were backdated to pretend that this had not happened.

iii. Funds were often advanced to companies for which there was no signed loan agreement. This included payments to Sands Equity, GAD, London Group LLP and London Power Consultants.

iv. Mr Thomson knew each of these facts.

1595. The fifth established representation is that the security would be held by an independent security trustee, GST, which would monitor the security.

1596. I am satisfied that this was false, to Mr Thomson's knowledge. As already explained:

i. GST, which was presented as an independent security trustee for bondholders, was set up by Mr Sedgwick.

ii. Mr Sedgwick was closely connected with LCF and the borrowers. He worked for the London Group under the instructions of Mr Hume-Kendall and was the company secretary of several of the borrowers.

iii. He therefore had a duty and interest to promote the borrowers' interests. This created an obvious potential conflict as any security trustee would have to enforce the security against those borrowers.

iv. A Maltese company, Oracle, of which Mr Thomson was the director, became the owner of the shares in GST by 27 October 2018. From this date, GST was therefore controlled by Mr Thomson himself. It was therefore not independent of LCF.

v. In any event, GST did nothing to monitor LCF's security.

vi. Mr Thomson knew each of these facts.

1597. The sixth established representation is that LCF was a genuine business which generated income and profit from lending activities, based on lending to SMEs; that the sums invested were capable of generating the necessary returns; and that the only charges to borrowers were the one-off 2% fee and interest on the loan, which would be 12-20%.

1598. I am satisfied that this was false, to Mr Thomson's knowledge. As already explained:

i. No returns were ever generated by any of LCF's lending activities. None of the borrowers ever paid any interest from of their own resources; rather they paid interest by drawing down further on their facilities with LCF, funded by new investors' money. Mr Thomson indeed accepted in cross-examination that LCF's borrowers used sums advanced by LCF (deriving from bondholders) to meet their interest payments. Hence, the amounts shown in LCF's books as "income" only ever represented money recycled from bondholders: it was drawn down by borrowers and used to pay interest on existing loans.

ii. Substantial amounts drawn from LCF through loans were immediately used to make payments personally to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding under the five SPA transactions. These amounts were "cashed out" (in Mr Thomson's words) to the individuals and were therefore not available to the borrowers for any income-generating businesses. These amounts could therefore

not have been applied in developing the assets of the businesses or acquiring income-generating assets. These amounts were therefore not being applied in lending to income-generating businesses, as had been represented. Mr Thomson knew that the purpose of many of the drawdowns under the loans was to fund payments under the SPAs.

iii. LCF represented that it was charging interest plus a one-off 2% fee. It deliberately did not disclose the 25% of gross receipts payable to Surge. This falsified the representation about the level of fees.

iv. Moreover, the 25% charge fundamentally affected the business model. I find (based on the Claimants' expert evidence) that there was no realistic prospect of LCF being able to recover interest plus the 2% arrangement fee, and the grossed-up charge to cover the amounts payable to Surge. The table in para [382] above shows the rates of return that would have been required to meet liabilities to bondholders. (This table is indeed conservative as it does not include the 2% fee.) As Dr Okongwu explained in his evidence, these rates were very much higher than commercial lending rates at the time.

v. In reaching my conclusions, I have taken account of Mr Thomson's contentions (recorded in [1584] to [1592] above) to the effect that the lending business was commercial and genuine. The same conclusions apply here.

1599. Mr Thomson knew the true position in all of the respects enumerated above. He also knew that bondholders were being presented with a false and misleading impression. The representations were made to persuade bondholders to invest.

1600. As to the point about LCF's borrowers not generating any income from its own lending activities, Mr Thomson said in evidence that 2019 was going to be transformative and that IOG had a potentially huge value. He was, however, unable to explain how LCF's borrowers were going to be able to pay sufficient income to LCF to enable it to service bonds of 1 to 3 years with quarterly interest obligations. He did not even attempt to suggest that the borrowers could have paid sufficient income to service the interest on the bonds. He made the vague suggestion that the borrowers might be able to refinance. In my judgment the possibility of refinancing was wholly speculative. But, in any case, it does not meet the complaint that from 2013 to 2018 LCF was selling bonds on the footing that they were then being and would be repaid from returns from LCF's lending operation. That never in fact happened.

1601. Mr Thomson submitted that he had not been dishonest in allowing these representations to be made. He made a number of points:

i. He said that his own background had been in banking and that he was new to investments of this kind. Things grew very quickly, and he was out of his depth.

ii. The people behind London Group, Mr Hume-Kendall and Mr Golding, were far more experienced as businessmen and he trusted and relied on them. He said that he was in a different league.

iii. He was not a details man; and was often out of the office.

iv. He was surrounded by professional advisers who reviewed and approved the public statements and did not suggest that they were false or wrong. The professionals included Lewis Silkin and Mr Huisamen.

v. The accounts were audited and neither PwC nor EY suggested that there was anything amiss.

vi. None of the other directors of LCF have been sued, which betrays a lack of faith in the allegation of dishonesty.

1602. None of this was remotely convincing. Mr Thomson reviewed and approved the IMs. He also knew what Surge was telling members of the public as he reviewed their Q&As (as explained in detail above). He knew the impression being conveyed to the public. I find that he knew all of the respects in which that impression was false (see above). There was no evidence before the court from Lewis Silkin or Mr Huisamen, or their understanding of the position. But their state of mind can make no difference anyway. Mr Thomson himself knew about the false statements; it does not matter what others thought. I also reject the idea that Mr Thomson was somehow out of his depth and incapable of appreciating what LCF was doing. He was the CEO of LCF and ran its day-to-day business. He knew what LCF was saying to the public and what was really going on. It is clear that he approved all of the IMs. It does not matter if on some other occasions he was less on top of the detail. The level of knowledge or sophistication of Mr Golding and Mr Hume-Kendall are again not material. He knew what he was doing. Again, there is no evidence about the auditors and what they understood. There is nothing in the audit reports to show that they reviewed LCF's public statements to investors. But even if they had it is irrelevant to Mr Thomson's state of mind. The fact that the other directors have not been sued also has no bearing: that is the Claimants' decision, and I must assess the case against Mr Thomson.

1603. I find that Mr Thomson deliberately and cynically procured LCF to present itself so as to maximise sales, knowing that bondholders were given a false and misleading story. His marketing efforts were extremely successful and LCF raised huge sums from investors. The false representations were systematic and widespread. I find that Mr Thomson dishonestly procured or allowed LCF to make false representations to investors.

1604. Mr Thomson's dishonesty is to be attributed to LCF. I also find that Mr Golding was dishonest and that his state of mind is to be attributed to LCF.

1605. The next issue is whether LCF's misrepresentations amounted to FCOB by LCF within the scope of section 246ZA.

1606. Mr Thomson submitted that the case based on LCF's misrepresentations was misconceived. He submitted that these allegations added nothing to the case about the way the business was conducted. He said that in order to establish the misrepresentations the Claimants have to show that the business was not being carried on as a legitimate business but as a mere façade for fraud, and if they cannot do that the way that the business was being presented to bondholders adds nothing.

1607. I do not accept the submission that the misrepresentation by LCF of its business to bondholders is legally irrelevant. As I have already explained, there is an overlap between

the three strands of the Claimants' case. Hence, the true factual position about, say, the SPAs (and whether they were genuine commercial transactions) is relevant to some of the alleged misrepresentations.

1608. But there are also separate elements. For instance, part of the case rests on the allegation that LCF lent to only a small number of closely associated borrowers in which Mr Thomson had a beneficial interest. The Claimants allege (and I have found) that that is at odds with the picture presented to investors by LCF. In my judgment there may be fraudulent trading where a company induces creditors to advance money to it by misrepresenting the nature of its business, particularly where the picture presented is fundamentally different from the truth. Putting it another way, raising money from creditors by false pretences is capable of constituting the carrying on of the business with intent to defraud creditors or for a fraudulent purpose.

1609. Mr Thomson's submissions appear to ignore the fact that the representations were alleged to be misrepresentations, to be false. I have found that LCF systematically and serially misrepresented its business to investors. The investors thought they were investing in a business which was lending to arm's length commercial borrowers, applying rigorous lending criteria, with a large and diversified loan book and small average loans, with an independent security trustee and rigorous security valuations. They were also told that the money would be repaid from returns from borrowers. LCF was in fact lending money to a small, inter-connected group of borrowers, with no track record and often with no loan security documentation. No proper lending criteria were applied; there was no monitoring of loans; there was no proper control of the use of the proceeds by the borrowing companies (so they were, for instance, allowed to apply them in making payments under the SPAs). There was no proper approach to the valuation of security.

1610. The business of LCF consisted of the raising of investments from bondholders and the application of the proceeds in a lending business. Raising money was therefore an essential element of the business. I have found that LCF systematically created a wholly false impression to investors about the nature of its business. This included false information about LCF's business model; the identity of borrowers; the way borrowers would be assessed for credit-worthiness; the valuation of security; how the money will be applied; the protection of a security trustee; and about the source of income from which bondholders would be paid their own interest and principal. To paraphrase, the business was sold as a safe investment; in fact (as I have found), LCF had no proper lending processes and was not a genuine lending business to the broad SME sector. It was in fact a way of raising funds to be applied by the small group of associated companies in the way of their choosing (including by paying cash to their owners).

1611. By attracting and raising money in this way, LCF was putting the economic interests of its investors in jeopardy. They thought they were going into a safe, properly run, commercial lending business. The true position was (for all the reasons set out above) quite different: they were essentially putting their resources into the hands of a small group of associated businessmen who could do what they liked with them (and did). From the moment of their investment, the interests of creditors were jeopardised. This resulted from the dishonest representations made by LCF. It was these that induced them to take a risk they never appreciated they were running.

1612. The misrepresentations were so widespread, fundamental and systematic that they cannot be regarded as merely incidental statements made in the course of an otherwise legitimate business. The marketing process (by making statements to induce investments) was a core, integral activity of the company. By systematically and deliberately creating a fundamentally false impression about its activities, LCF was carrying on business with intent to defraud creditors or for a fraudulent purpose.

Was there fraudulent conduct of business by LCF operating a Ponzi scheme?

1613. I turn to the second set of allegations.

1614. In para 21A of the RRRAPOC, the Claimants allege that LCF operated as a Ponzi scheme by which interest and redemption payments made to bondholders were paid with sums received from new bondholders. They alleged that in some instances, sums received from new bondholders were paid by LCF to borrowers, which transferred those sums back to LCF, either directly or via other entities, and those sums were then used by LCF to pay interest and redemption payments to existing bondholders; in such cases, the sums were transferred to LCF by such borrowers (and then used by LCF to pay interest and redemption payments to existing bondholders) originating with LCF and were not generated by any commercial activities on the part of the borrowers. Such borrowers included LOG and L&TD ("proposition 1"). In other instances, sums received by LCF from new bondholders were used directly to pay interest and redemption payments to existing bondholders without first being paid through a borrowing entity ("proposition 2"). LCF was dependent on attracting new bondholders in order to enable it to meet its existing liabilities. They allege that, as with all Ponzi schemes, it was an inherently unstable and unsustainable model that was inevitably going to collapse at the point at which it could not raise sufficient funds from new bondholders.

1615. The Claimants accepted that the term "Ponzi scheme" is not a legal term of art, though they referred to several authorities where the term had been used.

1616. The First and Eighth Defendants emphasised the point that there is no legal definition of the term and that it is necessary to consider what was actually happening. As explained below, they drew attention to the following features of the transactions. First, that the Claimants do not say that the loans made by LCF were shams; second, that under the loan agreements borrowers were able to draw down further principal to pay their existing interest obligations; third, that this is not a case (such as the Madoff case) where LCF lacked any underlying assets; its borrowers gave security over their assets, including interests in land and the convertible rights in IOG. They both submitted that, in effect, LCF was borrowing short and lending long and that if payments were made from new bondholders, this was to cover its cashflow demands until realisations could be made from the borrowers. They said that there was nothing wrong with this.

1617. I shall consider the substance of the allegations rather than spending too much time on terms or definitions. Nonetheless the term "Ponzi scheme" is convenient shorthand for an investment scheme under which a company's obligations to pay interest and principal to existing investors are habitually being paid from funds raised from new investors rather than from returns made by the company from its own underlying assets; and where new investors are not told that this is happening.

1618. The Claimants relied at trial on four witness statements from Mr Hudson, who has analysed the bank statements and other related documents for LCF, LOG, Waterside Villages, CV Resorts, FSES, L&TD, GRP, Sands Equity, Elysian RGL, Prime RDL and Green Electricity Limited ("Green Electricity"). He was cross-examined by counsel for Mr Thomson. I concluded that his evidence in his witness statements about the flow of funds into and out of LCF was materially unaffected and that he has accurately reflected and summarised the underlying documents.

1619. As to proposition 1 (the indirect recycling of money), I am satisfied by the evidence of Mr Hudson that LCF often paid money deriving from new bondholders to borrowing companies or other entities and that these funds were then almost immediately returned to LCF to make interest or redemption payments to existing bondholders. The payments to and by the borrowing companies were treated as further drawdowns by them from LCF.

1620. This may be illustrated by payments made through L&TD. Mr Hudson has shown a pattern of payments which operated as follows.

i. LCF was liable to pay a bondholder or bondholders on a given date.

ii. LCF would pay a sufficient amount of funds to L&TD to cover the liability.

iii. On the same or the next day, L&TD would make a payment to LCF, into its operational account, with amounts and payment references which matched the specific name(s) of the bondholder(s) concerned.

iv. The LCF operational account would then be debited to make a payment to the bondholder(s) concerned.

1621. Mr Hudson has given a number of examples of this happening from January 2016 onwards. An internal spreadsheet kept by Ms Maddock showed the payments into LCF's operational account from L&TD being described in a notes column as a "repayment" to named bondholders.

1622. Mr Hudson notes that redemption payments were normally addressed on an individual basis, whereas interest payments came to be managed on a bulk basis.

1623. To take an example:

i. On 24 February 2016 Mr Thomson emailed Mr Barker to say that it "would be useful to have an idea of the funds you will need for month end to ensure we have it covered".

ii. On 30 March 2016 Ms Maddock of LCF emailed Mr Thomson (cc. Mr Barker) to say that she had just transferred £93,442.82 to L&TD, and asked L&TD to return £39,055.07 with reference S2 Mar 16 Int, and £27,922.38 with reference S5 Mar 16 Int.

iii. L&TD immediately made payments of these amounts back to LCF, which used the money to make interest payments to existing bondholders. "S2" and "S5" were

bond series, and "Int" showed that the payments were for interest, with the payment date.

iv. New bondholder money was therefore paid by LCF to L&TD and immediately repaid by L&TD to LCF for payment of interest to the existing shareholders.

1624. At first, the payments were made through L&TD. This took place from January 2016 onwards.

1625. From around March 2017 round-trip payments of this kind were made through LOG.

1626. By the middle of 2017 round-trip payments were made through GRP and Sands Equity. LCF paid sums from new bondholders to GRP, which transferred them to Sands Equity, which repaid some of these sums to LCF in order to enable LCF to make interest and redemption payments to existing bondholders. I am satisfied from Mr Hudson's review of the extensive documents that these payments happened very frequently.

1627. Ms Maddock of LCF explained what was happening in an email to Mr Barker on 19 January 2016, saying, "[A named bondholder] reinvested their funds and they just wanted their interest paid to them. We paid this out of the LCAF ops account and until today hadn't had the money back from LTD to cover the payment".

1628. Mr Thomson authorised the payments to bondholders. For example, Ms Maddock emailed Mr Barker on 10 February 2016 with the subject "Repayments" and explained that this was the case: "Both of these clients have called in today screaming. Andy has confirmed to me that he is happy to lend the funds to make the repayments … With what's going on behind the scenes at the moment we're keen not to receive a complaint".

1629. On 29 July 2018 Mr Sedgwick sent an email to Mr Lee about a draft new facility agreement between LCF and LOG. Mr Sedgwick explained that "at the moment when there are redemptions these are funded by further drawings. If no drawdowns are available, it might be difficult to make the redemption". This was a reference to redemption of bondholders by LCF. Mr Sedgwick forwarded the email to Mr Hume-Kendall. Mr Lee forwarded it to Mr Thomson.

1630. After the raid by the FCA on LCF's premises in December 2018, Ms Maddock of LCF provided Mr Reid of Lewis Silkin with information on 22 January 2019. She told him that she was "working through the information requested by the FCA". She made clear that repayments by borrowers to LCF, which LCF then used to make redemptions to bondholders, "were funded by the borrowers refinancing their obligations by way of a drawing on their loan facility".

1631. I find as a fact that LCF depended on the use of new bondholder money to meet redemption and interest payments to existing bondholders. Mr Hudson's statements show that the companies to which LCF lent sums were in most cases non-trading entities which did not generate any income. When those companies paid sums to LCF, these were sums paid to them from LCF very shortly beforehand.

1632. I specifically accept Mr Hudson's evidence that:

i. The sums which were paid into LCF by new bondholders continued to be recycled through LCF and other intermediate payees before being paid to existing bondholders who were due to receive interest payments or redemption payments from LCF.

ii. The intermediate payees were, in most cases, non-trading entities which did not generate returns from business activities and only ever received funds from LCF (either directly or indirectly from other such entities which, themselves, only received funds from LCF) such that when the intermediate payees repaid LCF, the funds which were used to repay LCF were derived from the funds which were received from LCF previously.

iii. Each of the intermediate payee entities recycled sums received from LCF back to LCF, since in each case one of the following scenarios applied: (a) the intermediate payee only received funds from LCF; or (b) the other entity or entities from which funds were received, themselves only received funds from LCF; or (c) where external funds were received whose origin cannot be traced, the funds received from such entities were substantially less than the funds paid back to LCF, such that it can be concluded that the funds paid to LCF were (at least) largely made up from funds received from LCF initially or that, even if not on a strict "tracing" basis, the funds paid to LCF were financed in some way by the receipt of other funds received from LCF initially.

iv. The vast majority of the funds paid by LCF to the intermediary entities and which made their way back to LCF were ultimately funds which originated from LCF initially.

1633. Counsel for the First Defendant submitted that Mr Hudson was not an expert witness and that any opinions he has expressed are inadmissible. I do not regard the evidence summarised in the previous paragraphs as opinion evidence. Rather, Mr Hudson's evidence is essentially a convenient summary of the banking and other material. The conclusions drawn from it are inferences which do not depend on the exercise of any expertise and are matters for the court. I make these inferences (which correspond with Mr Hudson's) based on his analysis of the underlying materials and have not simply adopted his opinions.

1634. I am also satisfied more generally from the evidence before the court that LCF depended almost entirely on new bondholder investments to make redemption and interest payments to LCF's existing bondholders. There was no independent source of income from LCF's borrowers which could otherwise be used to make those repayments. None of the Defendants suggested that any of the borrowers ever made repayments from their own resources.

1635. As Ms Maddock put it in her email of 22 January 2019, repayments were funded by the borrowers refinancing their obligations by way of drawing on their loan facility.

1636. So far I have addressed the Claimants' proposition 1. There were also instances of proposition 2, i.e. where LCF used sums received from new bondholders to make redemption and interest payments to existing bondholders, without any intermediate payments through connected borrowers.

1637. This took two forms. The first was that LCF circulated money through GCEN before using the funds to make redemption payments. The money was LCF's throughout, as GCEN was LCF's collection agent. This happened from September 2018 onwards, after Mr Thomson set up additional GCEN sub-accounts for individual borrowers. During October 2018, for example, LCF paid money raised from new investors to individual borrowers' accounts with GCEN, which returned the sums to LCF's repayment and interest account, to enable LCF to make redemption and interest payments to existing bondholders. The relevant instructions given by LCF to GCEN required an immediate payment of money back to LCF, sometimes within an hour.

1638. The second form was where new bondholder investments were paid from GCEN to LCF, which LCF then used to repay existing bondholders. Such sums collected by GCEN were new bondholder money collected on LCF's behalf. I accept Mr Hudson's analysis covering the period from 9 October 2018 to 6 December 2018, and conclude that payments by LCF to bondholders in that period consisted very substantially of money which originated from new bondholders.

1639. As already explained, this is unsurprising: LCF had no source of income from its borrowers, and so depended on the use of new bondholder money to repay existing LCF bondholders.

1640. Mr Thomson and Mr Sedgwick both accepted that, in point of fact, LCF used funds raised from new bondholders to make redemption and interest payments to existing bondholders.

   i. Mr Sedgwick declined to give oral evidence. But in his opening skeleton argument, he accepted that LCF used funds from later investors to repay earlier investors. Mr Sedgwick, however, disputed the characterisation of this arrangement as a Ponzi scheme.

   ii. Mr Thomson accepted in evidence that interest paid by the borrowers to LCF (and used to pay existing bondholders their interest and redemptions) was funded by new advances from LCF and these in turn were funded by new bondholders' investments.

   iii. Mr Thomson also accepted that L&TD had no independent source of funding than LCF and that LCF was not generating any revenues or profits from any commercial activities.

   iv. Indeed, Mr Thomson did not materially dispute the details of Mr Hudson's evidence about payments from and into LCF.

1641. Mr Thomson also accepted that payments to LCF's existing bondholders were funded by sums LCF received from new bondholders, which were first paid to connected borrowers for that purpose. He said that this was something which the loan agreements "allowed to happen" and that the borrowers were simply "gearing up" to pay their liabilities. He again took issue with the Ponzi scheme characterisation. He said that the issue was essentially a cashflow one: the borrowers could in time have made profits or refinanced.

1642. As to this last point, Mr Thomson accepted that he did not know when any of the borrowers would be able to start generating significant profits. Some of the companies

held interests in undeveloped land. LOG held some warrants and convertible debt interests in an AIM listed company. I find that Mr Thomson had no reason to think that any of them would be able to generate profits to enable them to pay the interest or principal on the loans within the three-year tenor of the loans.

1643. I have already explained that Mr Thomson made the wholly speculative suggestion that the borrowers might have been able to refinance. There was no evidence that that was even being contemplated. None of the borrowing companies was funded by any lender other than LCF, and there was no evidence to suggest that they would be able to refinance their liabilities to enable a repayment to LCF.

1644. Moreover, as already explained, Mr Thomson knew more than half of the amounts paid out by LCF from bondholders' money had been paid to the Defendants (either commissions to Surge or "cashed out" by the individuals) and was not being used in any business activities of the borrowers.

1645. I find that Mr Thomson knew that none of the borrowers were paying interest from their own resources. I also find that he knew that there was no realistic prospect of the borrowers generating enough to repay their interest liabilities as contractually required; or to pay the principal at the contractual repayment date; or to refinance to repay their debts at those dates. In short, his evidence on these points was wholly theoretical and bore no relation to the real predicament of LCF.

1646. I also reiterate that he knew that LCF was representing to potential bondholders that it would pay the coupons and redemptions on the bonds from resources generated from its lending activities. There was naturally no suggestion in any marketing materials that funds raised by LCF from new bondholders would ever be used to pay the existing bondholders. Disclosure of that practice would have undercut LCF's fund raising activities.

1647. Mr Thomson submitted in closing that it was a crucial fact that until the FCA raid, LCF had made all interest payments to bondholders as they fell due. However, that ignored the source of the payments to the bondholders. It is indeed in the nature of a Ponzi scheme that the earlier investors are paid their debts, and they are not the ones who suffer. It is the later investors, whose money is used to pay the earlier debt, who lose out.

1648. Mr Thomson and Mr Sedgwick both drew attention to the fact that the Claimants were not alleging that the loans were shams (so that LCF had the benefit of the loans) and that real investments had been undertaken by the borrowing companies. They submitted that this undermined the allegation that there was a Ponzi scheme. They both emphasised the investments in IOG and Atlantic Petroleum. The former investment was worth tens of millions even on the Claimants' case. It had not been impugned. There were other valuable assets. For instance, Lakeview was sold by the administrators for more than £10 million.

1649. In my judgment, the fact that the loans are not impugned as shams and that there were some genuine underlying assets is not in any way inconsistent with the existence of a Ponzi scheme in the present case. The liabilities of existing investors were entirely met from funds invested by new ones, rather than from the resources of the issuing company, without this being explained to the new investors. The mischief of such a scheme is that

new investors are attracted to invest in the belief that their money will be invested into assets which will generate the resources needed to pay them interest and principal. They do not anticipate that their money is going to be used immediately to pay off old investors (or indeed being disbursed in other ways which do not generate the returns needed to repay them).

1650. One can posit an example. Imagine asking a class of new investors, the N1s, whether they would be willing to invest if they knew that a significant part of their money was going to be used to pay off old investors, even if the issuer was also going to use some investors' money to invest in underlying property. The answer would be negative, because N1's money was not all going to go into a resource-generating pot. If N1 thought that their own chance of recovery depended on the issuer attracting new investments from yet further classes, N2, N3 etc., they would not invest. Of course, if the issuer had explained what it was doing, N1 could not then complain.

1651. Here, LCF gave the impression that all returns to investors had been and were being paid from the interest and principal payments made by borrowers under the loan book.

1652. In my judgment, if (as here) the old investors were being paid entirely from the resources of new investors, it makes no difference that some of the new money may also have gone into genuine underlying assets. The company is still operating a form of Ponzi scheme. On the evidence here, none of the coupons and redemptions paid to bondholders derived from income generated by any of the borrowers; on the contrary, they were all paid from new investors' resources.

1653. I am satisfied that the business of LCF was operated as a form of Ponzi scheme, to Mr Thomson's knowledge:

i. The LCF business model was promoted to the public on the footing that money raised by LCF from bondholders would be lent to SMEs on short term loans and that the SMEs would pay interest and principal sufficient to fund redemption and coupon liabilities to bondholders. This model depended on the borrowers having the resources to repay their interest and principal obligations.

ii. In fact, the borrowers had no income-generating business which would allow them to repay even their interest obligations, let alone their principal commitments within a reasonable period. A number of the borrowers were non-trading. Others simply held undeveloped land or long-term investments, which were not yielding any income. In the event, which happened, none of the borrowers paid any interest or principal on the loans. All of the borrowers in fact depended on LCF for their funding and had no external sources of funding.

iii. As already explained, the coupon and redemption payments made to bondholders were funded by new bondholders' money. Where it was done indirectly (i.e. proposition 1), the borrowers immediately recycled substantial sums deriving from LCF and funded the "repayments" of interest by making further drawdowns from LCF. This was happening from as early as January 2016.

iv. It is irrelevant whether this was contractually permitted under the loan agreements. What mattered was the commercial substance. This was that the borrowing companies could not and did not pay their own liabilities from their own resources.

Instead, money was round-tripped from one group of bondholders to another. The borrowing companies did not contribute anything.

v. In addition, some of the money was directly recycled within LCF from new bondholders to pay liabilities to existing ones (i.e. proposition 2).

vi. As already explained, Mr Thomson sought to justify these practices by treating the issue was a timing or cashflow one. I have already held that his evidence on this point was entirely theoretical and lacked reality. There was no realistic prospect of the borrowers generating any funds (whether through trading or refinancing) within the lifespan of the loans. Moreover, and just as significantly, there was no realistic prospect of their doing so within the contractually agreed period for paying interest under the loans.

vii. Moreover, as Mr Thomson knew, more than half of the amounts paid out by LCF to borrowers reached Surge or the four individuals and was therefore not being applied in income-generative activities.

viii. The consequence of using new bondholder money to pay old ones was to generate an inherently unstable business for LCF. Liabilities were being incurred to new bondholders to pay old ones, without the relevant funds being applied in any business activities of the borrowers. Though the borrowers' principal liabilities were increasing, the full funds were not coming into their hands for application in their businesses. A significant proportion of the new funds were simply being repaid to LCF for repayment to the borrowers.

1654. For these reasons, I am satisfied that the Claimants have established the second alleged form of FCOB.

Was there fraudulent conduct of business by misappropriation of LCF's assets?

1655. The Claimants accept that legally the funds lent by bondholders became the property of LCF and that LCF was not a trustee. In legal terms, any alleged misappropriation can only apply to LCF's property. The Claimants say, however, that there was one source of assets for LCF, namely, investments by bondholders. They say that LCF put investors' economic interests in jeopardy by facilitating misappropriations of the funds invested by them.

1656. The Claimants allege that the principal means by which money was misappropriated from LCF was the SPAs, under which cash was drawn under the loans from LCF and was then paid out to Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding and others. These were the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA and the LPT SPA. I have already described and made findings about these.

1657. There are some generic features of the various transactions.

1658. First, it was essential to each of the transactions that LCF entered into loan agreements. The loan agreements were the sole source of funding of the payments under the SPAs. Indeed, the fact that payments were to be made under the SPAs was the reason for many of the drawdowns under the various loan agreements. For the detailed reasons set out

above, Mr Thomson knew that many of the drawdowns were made to fund payments under the SPAs.

1659. As to this, I accept the Claimants' case that the loan arrangements were not conducted by LCF or the borrowers as commercial lending transactions would have been:

i. LCF regularly advanced money to connected borrowers in the absence of any written loan agreement.

ii. LCF regularly allowed drawdowns over agreed limits.

iii. LCF did not require proper valuations addressed to it by a reputable valuer of the assets offered as security.

iv. LCF did not require legal advice confirming that proper security had been granted.

v. LCF was party to many backdated loan agreements and side letters, whose purpose was to mislead others (including auditors) into believing that LCF remained within contractual lending limits, and conducted a genuine business.

vi. LCF was party to the re-allocation of its liabilities to new corporate vehicles for no commercially defensible reason (see the "support" companies, and the transfer of the loan to Mr Golding to River Lodge UK).

vii. Money advanced was not always in fact paid to the borrower identified in the loan agreement, but to various companies under the control of Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding.

viii. As explained above, it is very improbable that a commercial borrower would have been prepared to enter an agreement to pay the grossed up 33% fee (needed to meet the Surge commission) plus a 2% arrangement fee and a contractual rate of interest of 1.75% above the liability to bondholders.

1660. Second, the transactions involved share purchase agreements which provided for sums to be paid to some of the Defendants personally. These were funded by loans from LCF, as was always intended. I have found in the case of each of the SPAs that they were not genuine commercial sales but were artificial devices justifying the payments to the four individuals and others.

1661. These SPAs had a number of common features: they involved the sale of shares with no value or a value which could not possibly justify the price paid; they involved elements of self-dealing, such that the overall beneficial ownership did not change (though the division of economic interests may have done); they did not involve arm's length negotiations; they were drafted by one set of lawyers; and they relied upon artificial devices in order to justify the consideration to be paid to the Defendants. Some of the devices used were artificial clauses providing for an uplift in the consideration, non-existent redeemable preference shares which had never been issued, and the sale of companies whose underlying assets had no or little value. In the case of the Elysian SPA and the Prime SPA, the "purchasers" were entities controlled by individuals who agreed to participate in the transactions in return for a fee.

1662. Moreover, documents were frequently backdated in order to conceal the fact that sums had already been paid to Mr Thomson, Mr Hume-Kendall, Mr Barker, and Mr Golding.

1663. I have found that each of the SPAs lacked a genuine commercial rationale and that they were artificial devices for funds deriving from LCF to be paid to the various individuals.

1664. Third, the SPAs were very elaborate. A great deal of effort went into creating the structures. They were carefully crafted to give the impression of being genuine transactions.

1665. The SPAs were a means by which assets of LCF were ultimately transferred to the four individuals. There was no conceivable basis on which it could have been in the interests of LCF to allow its assets to be applied in this way. The result of the SPA transactions was that tens of millions of pounds of LCF's assets were paid (via the loans) to the first four Defendants under uncommercial and artificial transactions. Those amounts were "cashed out" to the individuals and were not available to the borrowers as a means of repaying (or generating resources) to repay LCF. They went to the individuals and their value was lost. They were not replaced by anything of real value in the hands of the purchasing companies and therefore were not (even indirectly) available to the borrowing companies. No director of LCF could ever properly have allowed LCF's assets to be distributed in that way. Mr Thomson knew all these facts. I find that the advances to the borrowing companies for the purposes of funding the obligations under the SPAs constituted a misappropriation of the assets of LCF.

1666. The First and Eighth Defendants emphasised in closing that the case was flawed because the Claimants accepted that the loans and the SPAs were not shams. The Defendants submitted that this amounted to an acceptance by the Claimants that the lending business was genuine. They argued that LCF had an asset (namely the benefit of the loan) each time it advanced funds. It also took security. LCF was therefore conducting a genuine business. While complaints may legitimately be made about the way it carried on its business (e.g. whether it required proper documentation before making loans, whether the security was adequate, and so on), these amount to allegations of negligence or misconduct, but not to fraudulent trading.

1667. The First and Eighth Defendants also observed that the Claimants were not contending that that the SPA transactions were shams. They said that it must follow that these are accepted to be genuine transactions. The sellers sold and the buyers obtained the sales transferred under them. Any allegations of overvaluation, backdating and so forth might give rise to different claims, but they do not amount to a case in fraudulent trading.

1668. I am unable to accept these arguments. The fact that the Claimants do not allege that the loans or the SPAs were shams does not serve to undermine the claims. The Claimants' case (which I have accepted) is that the loans were uncommercial and that the SPAs (under which some of the sums drawn down were paid) were used as an uncommercial, artificial mechanism, to justify channelling the funds to the individual recipients. The fact that LCF may have obtained some legal rights under the loan arrangements does not prevent what happened also being part of a fraudulent trading of the company.

1669. Indeed, there may be a wide variety of cases where the transactions by which the business of a company found to have traded fraudulently have not themselves been impugned.

Similarly with the SPAs. It is no answer to the case advanced against the Defendants to say that the Claimants have not sought to say that they were shams. I also note that LCF was not itself a party to the SPAs and therefore could not have applied to set them aside.

1670. Hence, it is no answer to the allegation that the assets were misappropriated to say that the legal property passed from LCF to the borrowers and then from the borrowers to the sellers under the various SPAs. The various steps (loans by LCF, followed by payments under the SPAs) were part of an integrated scheme for the transfer of assets from LCF to the recipients. Indeed, in practice, many of the amounts drawn down by borrowers were never paid to them: they were instead funnelled through other accounts to the individuals.

1671. Moreover, on the facts of this case it is unrealistic to divorce the "loans" from the SPAs. By allowing the payment to the borrowing companies for the purpose of making payments under the SPAs, Mr Thomson and Mr Golding were applying LCF's funds contrary to the proper purposes of LCF. That was a misappropriation of its assets. These payments again jeopardised the bondholders' economic interests by wrongly reducing the assets available to meet their claims.

1672. Apart from the loans and SPAs, assets were misappropriated in various other ways. LCF was used to make direct payments to various of the Defendants such as in reliance on false invoices, and otherwise to benefit Mr Golding, whether under cover of loans to Mr Golding directly or other transactions for his benefit. None of these payments were made for the proper purposes of LCF. These payments, again, jeopardised the bondholders' economic interests by wrongly reducing the assets available to meet their claims.

1673. I specifically address next the knowledge of Mr Thomson and Mr Golding. As to this, I have already made the following findings:

i. Mr Thomson and Mr Golding knew of the relevant facts about the loans (including the advances made without agreements, the backdating of documents etc) and that drawdowns were made under the loan agreements to enable the payments to be made pursuant to the SPAs.

ii. Mr Thomson and Mr Golding knew of and were involved in each of the SPAs. They knew that the vendors' payment obligations under the SPAs were entirely funded (as was always intended) from loans from LCF, and that the loans were an integral part of the SPA transactions. I have found that they knew that the SPAs were artificial, uncommercial, devices designed to justify the payment of sums to them and others; and that the assets transferred under them either did not exist (the preference shares) or did not come close in value to justify those payments.

iii. Mr Thomson and Mr Golding knew that when drawdowns were made for the purposes of the SPAs, the four individuals generally received their share of the proceeds in the agreed ratios.

1674. I agree with the submission of Mr Thomson's counsel that a key issue under this heading is whether he entered the alleged buy-out agreement in July 2015 and that this is crucial to the allegations of misappropriation. I have, however, rejected his case in that regard and have found that he appreciated that when he received payments under the various SPAs, he was simply getting 5% (or 7.5%) of the full amount going to the vendors. I have already noted Mr Thomson's evidence to the effect that he would have been appalled if

he had realised that the other individuals behind the London Group were “cashing out”. I have found that that is precisely what he understood at that time. Indeed, he procured it by causing the payments to be made under the related loan agreements. I also find that at all material times, Mr Thomson knew that LCF was raising funds from bondholders in anticipation that they would end up with those individuals via the loans and SPAs. He was not appalled, or even mildly surprised, because he and the others wanted the money and knew where it was coming from.

1675. I also find that Mr Golding knew as much as Mr Thomson about the loan arrangements and the SPAs. He (and Mr Barker, his right-hand man) of course knew how much they were receiving under these arrangements.

1676. I am satisfied that by raising funds from investors and then causing very large amounts from them to be advanced to the borrowing companies so that the individuals behind the London Group companies could “cash out” under the SPAs, LCF’s business was carried on with intent to defraud the creditors of the company or for a fraudulent purpose. The interests of investors were jeopardised as these amounts were paid away by LCF to the individuals (who were under no obligation to pay any part of their receipts to LCF). The same is also true of the other forms of misappropriation referred to above. By causing sums invested by bondholders to be paid to Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding and others, LCF carried on business with the intent to defraud them.

Global assessment of the allegations of FCOB by LCF

1677. I have concluded that the Claimants have established each of the three alleged forms or strands of FCOB by LCF. I consider that each would be sufficient on its own to constitute the carrying on of LCF’s business with intent to defraud creditors or for another fraudulent purpose.

1678. The three strands should, however, also be considered together. For reasons already given, they are inter-connected. Part of the misrepresentation case is that LCF gave the false impression that the sums raised from investors would be lent to SMEs which would then pay interest and principal from their own resources, which in turn would be used to repay the bondholders. The findings under the second strand above show that in fact none of the returns paid to bondholders derived from the resources of the borrowing companies. Again, the representations about lending to numerous arm’s length companies, and the need to comply with rigorous lending criteria were at odds with the real position, where LCF’s funds were paid to borrowers where the purpose of the advance was to fund payments to a small group of associated individuals for assets owned by companies associated with them (see the third strand).

1679. A global assessment, combining the three strands of the case analysed above, serves to strengthen the conclusion that LCF carried on business with intent to defraud its creditors or for another fraudulent purpose.

1680. I have reached this conclusion by attributing to LCF the state of mind of Mr Thomson. It is unnecessary to repeat the exercise by reference to the state of mind of Mr Golding. However, my findings about the knowledge of Mr Golding set out at [1700] to [1702] below would have been sufficient to satisfy this requirement. The combined knowledge of the two of them strengthens this conclusion.

1681. Mr Thomson's counsel contended that the real reason for the bondholders' losses was the FCA raid in December 2018 and that, had that not happened, LCF would have carried on in business and paid its creditors. I disagree. By the time of the raid LCF had liabilities to bondholders of well over £200 million. It had disbursed tens of millions of pounds into the hands of the First to Tenth Defendants. These were unavailable to repay LCF. It had made loans to a small group of companies which had no prospects of repaying the principal and interest due from them. Those companies were not generating any income. Most of the supposed security had very low or little value. The only substantial assets were the investments by LOG in IOG and Atlantic Petroleum, but at all material times the value of these fell far short of the amounts outstanding to LCF. The submission that LCF had paid all interest and principal due to bondholders until the date of the FCA raid also ignores the evidence summarised above that LCF was run as a Ponzi scheme. It did not have the resources to make these payments from its own legitimate business. Instead it raised money from new bondholders to pay its existing liabilities. LCF was not a healthy company, properly paying its creditors until being closed by reason of regulatory action. It was actually dishonestly raising new money by false pretences to stay afloat. It was the FCOB by LCF that resulted in the losses to its creditors, not the actions of the regulator in December 2018.

Participation and knowledge of Mr Thomson?

1682. Mr Thomson was a director and the CEO of LCF throughout the material period.

1683. I have already made detailed findings about the knowledge and participation of Mr Thomson in relation to (a) the representations made by LCF to bondholders and his knowledge that they were untrue; (b) the operation of LCF as a Ponzi scheme, using funds raised from new investors to pay the liabilities to earlier ones; and (c) the misappropriation of assets from LCF through the SPAs and other means.

1684. In short:

i. Mr Thomson was actively involved in making false representations to prospective bondholders. He was the ultimate decision-maker at LCF regarding the manner in which LCF presented itself to bondholders. He knew of representations made on behalf of LCF.

ii. Mr Thomson caused LCF to issue the bonds under which bondholders invested sums into LCF. Mr Thomson was also responsible for LCF's lending and payment decisions. He signed the loan agreements and security documents on behalf of LCF, including documents which were falsely backdated. Mr Thomson was responsible for making payments out of LCF to the connected borrowers and gave approvals in this regard.

iii. Mr Thomson caused or permitted sums from new bondholders to be used to make payments to LCF's existing bondholders. Mr Thomson provided confirmation that LCF's assets could be lent, in order to be returned to LCF, and then used to repay bondholders.

iv. Mr Thomson also participated actively in numerous aspects of the five SPA transactions by which sums were misappropriated from LCF and paid to Mr

Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. The details have been set out above.

v. Mr Thomson participated in other misappropriations from LCF, including the payment to himself of 0.5% of LCF's receipts from new bondholders, which Mr Thomson arranged to be paid to himself through Surge. Mr Thomson also participated in (and approved) misappropriations from LCF in other ways, as explained above.

vi. He therefore participated in the FCOB of LCF.

1685. For the detailed reasons given above, Mr Thomson knew of the falsity of the representations; of the operation of LCF as a Ponzi scheme; and of the misappropriations of LCF's assets through the SPAs and otherwise.

1686. I am satisfied, in the light of these findings about his state of mind, that Mr Thomson's conduct was dishonest.

1687. Mr Thomson is therefore liable for fraudulent trading. The quantum of the contribution he should make is addressed below.

Participation and knowledge of Mr Golding?

1688. Starting with participation, as explained above, Mr Golding had ultimate control over the affairs of LCF throughout the relevant period. Mr Thomson was accustomed to and did act in accordance with his instructions or directions in relation to LCF at all material times.

1689. Mr Golding did not engage in the proceedings beyond pleadings. He failed to give disclosure of his documents and was then debarred from defending the case. The Claimants' case against him, therefore, is partly inferential. The documents disclosed by the other parties show that Mr Golding preferred not to communicate by email; and that he acted through proxies (such as Mr Barker). I find that this was at least in part because he had been disqualified from acting as a director of companies. The documents showing his direct involvement are therefore more limited than in the case of some of the others.

1690. I am satisfied that Mr Golding was a shadow director of LCF at all material times. This is addressed in the section on directors' duties below: the conclusion is at [1936] below. In short, Mr Golding gave directions to Mr Thomson regarding LCF's affairs, throughout the entire period during which LCF carried on business, and Mr Golding could and did overrule Mr Thomson.

1691. Mr Golding also saw himself as being able to communicate on behalf of LCF with Mr Careless, Surge and Mr Russell-Murphy directly in connection with LCF's affairs. An example of this is Mr Golding's promises about providing security. He did so without referring to Mr Thomson. Though Mr Thomson complained about this and said that Mr Golding should not have communicated without his authority, I find that Mr Golding acted in this way because he considered that he had ultimate control.

1692. Mr Golding was involved in commenting on LCF's marketing materials and its website in mid-2015. These contained the principal representations which would be made by LCF throughout its lifetime. It is probable that Mr Golding was also involved later and that he knew what was being said in the marketing materials.

1693. Mr Golding participated in LCF's fraudulent trading by personally borrowing from LCF and receiving sums from LCF (ostensibly on that basis) from 27 November 2015 onwards. Mr Golding was thereby party to transactions by which sums were misappropriated from LCF, and the representations to prospective bondholders were rendered false.

1694. Moreover, Mr Golding loaned sums to Mr Careless in January 2016, to be repaid by Surge, reducing the commissions it charged to LCF: in this way, Mr Golding was directly facilitating Surge's activities in making representations on LCF's behalf to prospective bondholders; and funding and encouraging the growth of LCF, such that it would result in a higher level of new investments from bondholders.

1695. Mr Golding agreed Surge's commission of 25%. This was not explained to prospective bondholders. The failure to explain it rendered what was said to bondholders false.

1696. Mr Golding also participated actively in numerous aspects of the five major transactions by which sums were misappropriated from LCF and paid to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. The earlier sections of this judgment addressing the transactions set out his involvement and participation. I have already concluded that these transactions were a means by which assets were misappropriated from LCF. By participating in them (and receiving payments under them), Mr Golding participated in the impugned carrying on of LCF's business.

1697. Mr Golding also negotiated the agreement with Surge by which 1% of all bondholder funds received by LCF during the previous month were misappropriated to himself, and submitted invoices and accepted payments in respect of those sums.

1698. In total, Mr Golding received more than £42.8 million from LCF.

1699. For these reasons, I conclude that Mr Golding participated in the FCOB by LCF.

1700. Turning to Mr Golding's knowledge, I find, first, that Mr Golding knew that the representations made by LCF to prospective investors about its business were false:

i. Mr Golding knew that the assets relied upon as security by LCF were inadequate to support LCF's ever increasing lending and could not be relied on as sufficient security. The four principal assets on which LCF relied for security were The Hill, The Beach, Paradise Beach, and Lakeview.

ii. Mr Golding was aware of the trust arrangement involving The Hill and El Cupey, such that it was held for the benefit of the Sanctuary investors. Mr Golding was aware that Tenedora had not acquired any interest in land at The Beach, as a result of his involvement in the Sanctuary scheme.

iii. Mr Golding knew that CV Resorts did not have any valuable rights in relation to Paradise Beach: he knew that CV Resorts had defaulted at the outset, and that CV Resorts had not purchased any units at Paradise Beach when the contract was terminated on 7 June 2017.

iv. Mr Golding knew the true value of the Lakeview site. He was the main figure behind the purchase of the Lakeview site, became the majority owner of LCCL, would have known the amount for which it was acquired, and was involved in the instruction of Savills to value the site. I infer that he had the same knowledge as Mr Thomson.

v. Mr Golding knew that these assets were relied upon as security for the lending from LCF to L&TD, and further lending to GRP's subsidiaries, including as a result of his participation in the Elysian SPA.

vi. Mr Golding knew that there was no adequate security for the existing lending to L&TD, and the consideration payable under the Elysian SPA was far in excess of the assets being transferred.

vii. Mr Golding knew that LCF's representations about conducting financial due diligence prior to making lending decisions, and the presence of financial controls and ongoing monitoring of its borrowers, were false.

viii. Mr Golding knew that LCF (as SAFE) had lent to Sanctuary PCC, which he knew was in financial difficulties and owed outstanding sums to the Sanctuary investors. Mr Golding knew that LCF (as SAFE) had therefore lent to an insolvent company at the outset.

ix. Mr Golding knew that LCF had performed no due diligence in connection with the loans to him from 27 November 2015, including as Home Farm Equestrian Centre.

x. Mr Golding also knew that his personal borrowing from LCF was novated to FSES (also known as River Lodge UK), and that was done to relieve Mr Golding from having to repay any of the money he borrowed.

xi. Mr Golding was the beneficial owner of numerous borrowers connected with LCF, and received the largest share of the sums paid out of LCF to connected borrowers according to the ratio agreed between Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. I find it more probable than not that he was aware that the payments were being made and that he authorised them from LCF.

xii. Mr Golding knew that LCF was lending only to a small number of closely connected borrowers and not to commercial borrowers in the SME market. Mr Golding knew that in lending to L&TD and to GRP subsidiaries, LCF was lending to connected companies which were connected on account of (among other things) their common ultimate beneficial ownership by Mr Golding.

xiii. Mr Golding also knew that the Prime group of companies was connected with him, and that sums borrowed by them would be diverted to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding.

xiv. Mr Golding knew that LCF lent sums to himself personally, and that he was connected with LCF as both its beneficial owner, and the individual who exercised ultimate control over it.

xv. Mr Golding knew that funds had been loaned to himself personally before the execution of any loan agreement, from 27 November 2015 onwards. Mr Golding signed a loan agreement at some point on or after 3 October 2016, but falsely backdated to 20 November 2015 to conceal the fact that LCF had paid funds without having any facility agreement in place.

xvi. Mr Golding knew that Sands Equity was a conduit for payments by the GRP subsidiaries as above. Mr Golding therefore knew that LCF's assets were not paid to its borrowers but were diverted to other companies.

xvii. It is probable that Mr Golding was aware that GST was LCF's security trustee, and that it was under the control and direction of Mr Sedgwick, which in any event was information in the public domain. In this regard, Mr Sedgwick had a long-standing relationship with Mr Golding; Mr Golding was ultimately in control of LCF and knew about its business. Mr Golding knew that Mr Sedgwick acted as the in-house lawyer for companies connected with Mr Hume-Kendall, Mr Barker, Mr Golding and the London Group, including on account of their common and overlapping participation and knowledge in the Sanctuary scheme, the Paradise Beach contract, the Lakeview site, SAFE, the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA, and the LPT SPA. Mr Golding therefore knew that GST was not independent of LCF or its borrowers.

xviii. Mr Golding was aware of the terms on which SAFE had raised sums from prospective bondholders, and as explained above, was aware of the representations made by LCF to prospective investors at all material times. He knew that sums raised from LCF were being used to fund payments to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. He was updated (including by Mr Thomson) about the amounts available for this purpose.

xix. Mr Golding knew that LCF was paying 25% of new funds to Surge as a commission. He had agreed this. He knew that bondholders were not told about it. I have also found that the arrangement under which he received 1% was an inducement to maintain the 25% fee arrangement.

1701. Second, I find that Mr Golding knew LCF had operated as a Ponzi scheme, and that it was unable to repay its investors.

i. Mr Golding was a beneficial owner of many of LCF's borrowers, including L&TD and London Group LLP (and its subsidiaries). It is probable that Mr Golding knew that LCF's borrowing companies, in which he owned a 45% beneficial interest, did not conduct any real commercial activity, and did not generate any profits from which they could repay LCF.

ii. Mr Golding was kept informed about new bondholder investments paid into LCF. He knew that when these funds were drawn, large parts of them were used to fund personal payments to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding, and were not used to generate income with which to repay loans to LCF.

iii. He was an owner and controller of Sands Equity. This was one of the companies involved in the round-tripping of money originating from LCF, back to LCF, to fund payments to existing bondholders.

iv. It is probable that Mr Golding understood that LCF did not have any other source of income or assets other than investments from new bondholders; that LCF's borrowers did not generate any income with which to make payments to LCF, which was funded by sums previously received from LCF; and that LCF used sums from new bondholders to make redemption and interest payments to existing bondholders, including by routing those sums through connected borrowing companies.

1702. Third, I find that Mr Golding knew that LCF's assets were being misappropriated, including by payments to himself:

i. I have given details of Mr Golding's knowledge of and participation in the SPAs. He knew that these were uncommercial transactions designed to conceal the payment of (what were ultimately bondholder) funds to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding in agreed ratios. He was a beneficiary of each of the transactions. In light of my conclusion about his ultimate controlling role over LCF and his beneficial interest in the London Group companies, it is probable that he understood how the payments under the SPAs were entirely funded by loans from LCF.

ii. Mr Golding knew that when these sums were drawn ostensibly pursuant to a loan, they were in fact used to fund personal payments to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding.

iii. He knew he was getting a 45% share (latterly, 42.5%) himself. It is probable that he knew that the other three participants were receiving the balance.

iv. Under his special arrangements with Surge, Mr Golding knew that he was being paid 1% of all bondholder funds received by LCF during the previous month from Surge and submitted invoices and accepted payments in respect of those sums. He received these sums because of his controlling role over LCF.

v. Mr Golding also misappropriated funds by his personal borrowing from LCF. Mr Golding participated in and knew about a plan to ensure that he did not have to repay the sums loaned to him from LCF.

1703. I am satisfied, in the light of these findings about his state of mind, that Mr Golding's conduct was dishonest.

1704. Mr Golding is therefore liable for fraudulent trading. The quantum of his contribution is addressed below.

Participation and knowledge of Mr Careless and Surge?

1705. The Surge Defendants were involved in LCF's business from July 2015 onwards by marketing and selling its bonds. As already explained, a key part of LCF's business was the marketing of bonds by making representations to potential investors. This was done

by a combination of the IMs, brochures, video, and by direct communications between potential investors and the sales team at Surge. The sales team answered questions from potential investors by phone, by electronic communications and, occasionally, in meetings. The IMs, brochures and video were available on the website designed and maintained by Surge.

1706. As explained above, this part of LCF's business was a form of FCOB in that LCF made a series of dishonest representations about its business to potential investors to persuade them to invest.

1707. Surge's involvement in the marketing of the bonds transformed the success rate of LCF's bond sales. LCF had previously sold negligible volumes of bonds. Once Surge had become involved, LCF's sales rapidly improved. Mr Careless set ambitious monthly targets and pushed his sales staff very hard, including through commission arrangements. I find that the efforts of the Surge Defendants were a highly material factor in driving LCF's success in attracting investments. LCF would not have achieved even a fraction of its sales without the involvement and participation of the Surge Defendants.

1708. As part of their efforts, the Surge Defendants promoted the sales of LCF's bonds by creating misleading investment comparison websites, such as Best Investment Funds, BSR and BIR. The Surge Defendants did this to maximise investments into LCF and commission payments to Surge.

1709. The Surge Defendants presented the Surge sales team as if they were employed by LCF. A potential investor who thought they were contacting LCF through the website would communicate with someone at Surge. Hence the Surge sales team was, as far as investors were concerned, the face of LCF. Once Surge became involved, LCF had no other sales team or staff. Surge was therefore instrumental in its business.

1710. Surge received from LCF a fee of 25% of gross monthly receipts. Surge received more than £60 million in total. The Surge Defendants knew this was funded entirely from investments by bondholders. Mr Careless benefited personally from these fees (receiving many millions of pounds personally).

1711. I find that the involvement of the Surge Defendants in the promotion and selling of the bonds, and the receipt by Surge of the 25% commission (and by Mr Careless of part of that) amount to participation in FCOB by LCF. I agree with the submission of the Surge Defendants that the real question for the court relates to the state of their minds.

1712. I start the analysis of this issue with some general considerations.

1713. First, the Surge Defendants were not part of the internal management of LCF. They did not know everything about its business and operations. I find, for instance, that Mr Careless did not know about the various SPAs. Nor did he know the details of LCF's banking arrangements or those of associated companies (as explained above).

1714. Second, SAFE was already operating when Surge came on board and Mr Russell-Murphy had been involved in selling its bonds, albeit on a small scale.

1715. Third, LCF had a number of professionals working for it. They are identified above. In summary, Buss Murton acted for LCF in relation to its lending business; Lewis Silkin advised on its bond issues; Oliver Clive were its accountants and initial auditors. Later, PwC and EY were its auditors for different years of account, respectively. Sentient Capital approved its communications and Mr Huisamen joined LCF at the beginning of 2016.

1716. Fourth, Surge was a marketing company. It did not claim any special qualifications or have any authorisations under the financial services regulatory regime.

1717. Fifth, I agree with the submissions of the Surge Defendants that trust is generally the basis of business and that the court must avoid hindsight in approaching the evidence about knowledge.

1718. On the other hand, I note the following:

i. Mr Careless was an experienced and intelligent businessman. Before he began to work with LCF, he had experience of the unregulated bond market. He repeatedly said in oral evidence that the market had some very bad products and that there was a lot of cynicism or scepticism about the unregulated mini-bond industry (see e.g. [810] above). He knew that there had been scandals with mini-bond products.

ii. Mr Careless also explained that Surge were cynical about LCF because people who are trying to build businesses say lofty things which turn out to be untrue or insubstantial.

iii. The Surge Defendants knew very little about LCF at the beginning of their relationship. Ms Venn had undertaken some rudimentary Google searches. Those had revealed nothing at all about Mr Golding, who they saw as the driving force behind LCF.

1719. With these general points in mind, I turn to consider the allegation that the Surge Defendants knew about the FCOB by LCF.

1720. It is convenient to start with the allegations about the false representations made by LCF in selling bonds.

1721. The Surge Defendants knew of the statements that were made to bondholders. As a marketing company and its CEO, they indeed were instrumental in making them. To the extent that the representations went beyond the express words used, I find that the Surge Defendants understood the representations to include those implications. The implications I have found to be included in the statements were obvious and there is no reason to think that Mr Careless did not understand them in that sense.

1722. Mr Careless frequently sought in his evidence to excuse Surge's position by saying that it was merely a marketing company, working for LCF, and that there were others, including Mr Huisamen and Lewis Silkin, reviewing the marketing materials. These materials included the scripts used by Surge.

1723. As to this, if and to the extent that Mr Careless knew that the statements were misleading, it is not an answer that others may have approved them.

1724. However, when assessing whether Mr Careless realised that the statements being made to the public were false and misleading, it is material to keep in mind that he knew there were professionals involved, and that he thought they would act properly. In my judgment, Mr Careless was entitled, unless he knew facts which rendered those statements untrue, to suppose that LCF was presenting its products truthfully and fairly, and that (had this not been so) the professionals involved would have spoken out or resigned.

1725. One of the misrepresentations I have found to be established is that LCF was lending on commercially competitive terms to numerous unconnected SME borrowers in arm's length transactions. I have also found that Surge positively represented this to investors.

1726. I turn to Mr Careless's understanding of the actual position.

1727. Mr Careless believed that Mr Golding ultimately controlled LCF, as explained above. Mr Careless dealt with Mr Golding in relation to LCF without reference to Mr Thomson. Mr Careless believed that Mr Golding still controlled LCF and that Mr Golding could "squeeze" Mr Thomson when needed.

1728. Mr Careless knew that as at 20 July 2015 LCF's operation was very small. Despite this, Mr Careless knew that LCF was making representations that LCF lent to a large number of SMEs.

1729. Mr Careless also knew that LCF never had a lending page and that this is something which a business ostensibly conducting lending activity would be expected to have.

1730. On 25 January 2016 Ms Venn sent the email set out at [1021] above. I am from that (and the surrounding factual findings) satisfied that by that date (at the latest) Mr Careless believed, first, that Mr Thomson, who ostensibly ran LCF, had explained that all of LCF's loans were connected to Mr Golding, who ultimately controlled LCF; and, secondly, that Mr Thomson regarded this as sensitive information and did not want it to be communicated in writing. This second point was itself an obvious ground for concern.

1731. Based on this email, I conclude that Mr Careless actually knew by 25 January 2016 at the latest that there was a very small number of borrowers, all connected with Mr Golding.

1732. However, in his oral evidence, Mr Careless accepted that he had worked out "early on" that all of the loans were connected with Mr Golding, and that the number of loans was very small. I conclude that it is probable that by "early on", he meant by the end of December 2015 at the very latest. As to this:

i. By 10 December 2015 at the latest, Mr Careless knew that Mr Thomson was saying that all of LCF's loan book was lent to "Thomson's company", i.e. that LCF did not lend to numerous unconnected businesses but in fact made loans to a single company connected with Mr Thomson.

ii. Mr Careless knew in December 2015 that a pertinent question in response to this information was whether LCF's borrowers or proposed borrowers were under the

same or connected ownership. He accepted in evidence that this issue was pertinent (see [955] above).

iii. Mr Careless also knew by the end of December 2015 that businesses owned by Mr Golding were borrowing from LCF. He believed this because Mr Golding had personally offered to put security on LCF's balance sheet.

1733. In case this conclusion about actual knowledge is wrong, I turn to address the issue of blind-eye knowledge.

1734. I find that for the reasons set out in [1727] to [1732] above, by the end of December 2015 Mr Careless had firmly targeted suspicions that the representations made on behalf of LCF about arm's length lending to numerous borrowers were false. He believed that LCF was a small operation, that LCF had only lent to a borrower connected with Mr Thomson or Mr Golding, that the "security" or assets supporting LCF's lending was linked to Mr Thomson and/or offered by Mr Golding, and that Mr Golding's businesses were borrowing from LCF. He believed that Mr Thomson and/or Mr Golding owned and controlled LCF. He also had a general scepticism about mini-bond issuers.

1735. I find that Mr Careless deliberately did not make inquiries to address these suspicions. He believed that LCF would "stay under the radar for a while yet" and thereby avoid investigation from the FCA. He was interested in continuing to make as much money as possible. Mr Careless could have asked Mr Golding and Mr Thomson for evidence about the lending operations (and insisted on written evidence of borrowers, security and so forth) but deliberately chose not to do so.

1736. I also find that, even by this early stage in their dealings, Mr Careless did not trust Mr Thomson or the others involved in LCF to tell the truth. Mr Partridge had said that "Spencer's lot and so JRM" were not to be trusted, after pointing out contradictions made by Mr Thomson. I find that by December 2015 Mr Careless thought that Mr Thomson could not be trusted to tell the truth.

1737. As to the requests in fact made by Mr Partridge and Ms Venn for information, Mr Careless could have insisted that until the information was forthcoming, Surge would cease the marketing efforts. He did not do that. I find that is because he believed that it would have brought the relationship to an end. Mr Careless recognised that further information was required in order to satisfy Surge about the lending operations of LCF; and indeed, Ms Venn and Mr Partridge asked for this information. What is striking is that they did not receive the information or pursue their requests. I find that that is because Mr Careless did not want his suspicions confirmed. He wanted to carry on selling the bonds.

1738. The Surge Defendants thus deliberately refrained in December 2015 from pursuing their questions about the lending operations by LCF, or seeking to square what it was actually doing with the impression being given. Instead, Mr Careless sought to bolster the impression being given to investors. For instance, Mr Careless was involved in plans to create a lending page on LCF's website as a sales tool to give a more convincing impression to prospective investors that LCF did actually lend to unconnected companies.

1739. For these various reasons, I find that Mr Careless had actual knowledge, or alternatively blind-eye knowledge, by the end of December 2015 that LCF, and therefore Surge was deliberately misleading bondholders about the nature of LCF's lending business.

1740. Mr Careless later acquired further information which confirmed the understanding he had already come to. In May 2016, he received the detailed colour-coded spreadsheet from Mr Partridge which identified connections between LCF and the company from which it had obtained security. Mr Careless deliberately did not investigate these concerns. Instead, he decided to continue selling LCF's bonds.

1741. Mr Careless also knew that Surge's sales team continued to seek answers to questions regarding LCF's borrowers and that they were commonly asked by bondholders and that Mr Thomson was not prepared to provide such information to Surge's sales team or the public.

1742. On 18 May 2016 Mr Thomson provided answers to questions about LCF's borrowers (see [1096] above). This included the statement that there were 120 borrowers. Mr Careless knew that these were unsatisfactory and could not be believed, because they were inconsistent with previous information provided by Mr Thomson. Mr Partridge called them "the usual bs". Mr Careless's response at the time shows that he knew the answers were inadequate (see [1100] above).

1743. Mr Careless also knew on 18 May 2016 that Mr Thomson had drafted an answer which was designed to give a misleading impression about the number of LCF's borrowers (see [1102] and [1107] above). Mr Careless decided to continue aggressively selling LCF's bonds despite knowing that they gave prospective bondholders a false impression. As explained above, the reason for Mr Careless's decision was the desire to make money. Mr Careless was content for this misleading information to be communicated to the public to sell LCF bonds, because 25% of any investments from the public would be paid to Surge. I have found that Mr Careless deliberately took the decision not to ask questions about the apparent discrepancies between the reality and the sales pitch (see [1106] above).

1744. I have also rejected Mr Careless's evidence that he took steps to change what Surge told members of the public about the number of borrowers; in fact, Surge continued to say that there were over one hundred (see [409] above).

1745. I have also explained earlier that I do not consider that it is an answer for Mr Careless to say that he believed that Mr Huisamen or Lewis Silkin were reviewing the statements made by LCF and were aware of the true position (though his understanding of their role is relevant to determining what he believed).

1746. In case I am wrong in my earlier conclusions that Mr Careless had actual or blind-eye knowledge by December 2015 that the representations that there was widespread lending to arm's length borrowers was false, I find that by July 2017 at the latest Mr Careless actually knew this:

   i. Mr Careless knew that LCF had not made loans to 120 SMEs as represented to the public and knew that LCF had loaned to a small number of companies linked to Mr Golding.

ii. Mr Careless knew that Mr Thomson's comments on posts on the MSE forum about LCF's lending operation provided no answer to the concerns which were regarded by Surge as clearly a problem (see [1290] above).

iii. Mr Careless accepted in his evidence about this MSE post that that there was no LCF lending site; that LCF had not named any SME borrowers; that there was no LCF lending team; it was just Mr Thomson; that there were no lending team contact details; and that he had seen no evidence of how bondholder interest was being paid from SME loan interest (see [1293] and [1294] above).

iv. Mr Careless knew that this was a problem for their bond selling efforts and that Mr Thomson had not produced a proper explanation.

1747. Mr Careless also knew (as shown in emails in August and September 2017) that Mr Thomson did not want anyone to scrutinise his loan book because he had something to hide: Mr Careless knew what Mr Thomson was seeking to hide (see [1316] and [1317] above).

1748. By September 2017 Mr Careless again understood that the number of LCF's borrowers or loans was small (see [1314] above) and therefore knew that the statements that had been, and were being made, to the public were false.

1749. Mr Careless relied in his oral evidence, and in closing submissions, on the audited accounts. As to this:

i. The PwC audited accounts to 30 April 2016 said nothing about the number of loans. There was, in any event, nothing in the audited accounts to show that the auditors had considered the marketing materials or statements made to investors.

ii. The accounts audited by EY in February 2018 did not address the marketing materials. Mr Careless's reaction to the accounts has been addressed above (see [1452] to [1455] and [1470] above). He knew that the accounts raised a number of problems and inconsistencies regarding LCF's loans including that LCF only loaned to 11 borrowers.

1750. Mr Careless also had actual knowledge that the representation was false as a result of a conference call on 22 February 2018 between Mr Thomson, Mr Russell-Murphy and Ms Venn. Mr Thomson stated that LCF only had 7 borrowers (see [1464] above).

1751. As already explained, Mr Careless also had actual knowledge that LCF was a vehicle for lending to Mr Hume-Kendall and Mr Golding. In August 2018 Mr Russell-Murphy explained to Mr Careless that LCF 2 "needs to issue a loan to SHK/SG prior to going live", i.e. lending to Mr Hume-Kendall and Mr Golding was in the nature of LCF's activities and was being replicated for LCF 2 (see [1416], [1417], [1418], [1498], [1499] and [1502] above).

1752. Accordingly, I find that from December 2015 (and continuing thereafter), Mr Careless had actual or blind-eye knowledge that LCF was misrepresenting its business model to potential investors. It presented itself as lending on commercially competitive terms to numerous unconnected SME borrowers pursuant to arm's length transactions. Mr Careless knew that this was not true: it was in fact lending to a small group of closely

associated borrowers. I also find that even if Mr Careless did know this by December 2015, he actually knew it by July 2017 at the latest.

1753. I also find that Mr Careless knew that the decision to conceal the identity and number of the borrowers was deliberate. He knew that bondholders would be very unlikely to invest if they knew that the funds were being paid on to a small associated group of companies, themselves connected with the people running LCF. He knew that there was a deliberate decision to promote the business as a lender to the broad SME market as this was far more likely to achieve healthy sales of bonds.

1754. As already noted, Mr Careless repeatedly said in his evidence that Surge was a marketing company and that the sales force were reading from a script, which had been approved by Mr Thomson, Mr Huisamen and Lewis Silkin. As already explained, this does not justify the continued marketing of the bonds on a false basis. Surge was LCF's sales channel and Mr Careless knew that Surge's sales team was giving potential investors misleading information about the numbers of borrowers, average loan size, diversification of the loan book and the characteristics of the borrowers.

1755. The next relevant set of representations was (to paraphrase) that LCF had carried out proper due diligence on lenders.

1756. In October 2015 Mr Careless became concerned that LCF did not have a lending page, which would mean that LCF did not engage in the lending activity described in its IMs and other materials. Mr Careless was involved in efforts to create a lending page, designed to promote LCF's bonds to prospective bondholders.

1757. Mr Careless also knew that LCF was in fact lending to a small group of associated borrowers, themselves connected with the people running or controlling LCF. As noted above, Mr Careless knew that they were "funding their own operations".

1758. I find that the Surge Defendants thought throughout their involvement that it would have been in the interests of LCF to have a lending page and to be able to give some details of borrowers. Surge asked for this information so that it could present it to bondholders.

1759. In the light of these facts, I find that Mr Careless had a targeted suspicion by the end of December 2015 at the latest (and continuing thereafter), that LCF did not in fact conduct its lending activity in the manner represented to members of the public, in the sense of applying strict lending criteria or undertaking due diligence about the borrowers. This concern endured throughout 2016, 2017, and 2018, and was never properly addressed by LCF. Mr Thomson made a series of wholly unconvincing excuses, which Surge did not believe. I conclude that Mr Careless had blind-eye knowledge that this representation was false and misleading by the end of December 2015. Again, I do not consider that the role of Mr Huisamen (or Lewis Silkin) or the fact that Surge was using a script explains or justifies Surge's continued selling of the bonds on a basis which Mr Careless in fact knew to be false.

1760. The next relevant representation concerns LCF's loan agreements. The Claimants' only suggested basis for alleging that Mr Careless knew that this was untrue is that there was no written loan agreement between LCF and Surge. I reject this allegation. There is no evidence to establish that Mr Careless knew this.

1761. The next relevant representation is that there was an independent security trustee. Surge knew that this representation was being made.

1762. Ms Venn explained to Mr Careless on 3 December 2015 that GST did not have an online presence and that it appeared to be a new company. On 3 May 2016 Mr Careless said he would speak to Mr Thomson about setting up an online trail of provenance for GST. Mr Careless must have suspected by this stage that GST was not independent, as otherwise, he would not have been communicating with Mr Thomson about setting up an online presence on behalf of GST.

1763. In any event, on 9 May 2016, Mr Partridge identified a number of specific connections between GST and individuals linked to LCF, based on information taken from Companies House. He concluded, "there are a number of connections between LCF and GST" and indicated that they were significant ("without casting aspersions or commenting on their magnitude"). Mr Partridge referred expressly to the representation about the independence of GST. The same day, Mr Partridge provided detailed information contained in a colour-coded spreadsheet to Mr Careless, which substantiated these connections. The connections showed that GST was Mr Sedgwick's company and that he was associated with the London Group companies. Hence, by May 2016 Mr Careless actually knew that GST was not independent of the borrowers.

1764. Mr Careless accepted in his evidence that he understood that Mr Partridge was saying that the party, which was supposed to be there to enforce the security, was in fact connected with the borrowers in some way. Mr Careless also knew that his own staff were emphasising the independence of GST in their communications with potential investors.

1765. Mr Careless did nothing about this. He allowed his staff to continue to represent to investors that GST was independent. He was focused on continuing to maximise revenues. Mr Careless also knew that GST would stay in place for the long term (see [1074] above).

1766. The issues in respect of GST remained unresolved. To Mr Careless's knowledge, LCF continued to describe GST as an independent trustee.

1767. In short, Mr Careless knew that GST was connected with the borrowers against which it might have to enforce the security. Mr Careless knew that this meant that the statement that GST was independent was misleading. He also knew that his staff were continuing to emphasise the independence of GST. Mr Careless allowed this to continue. The Surge Defendants were looking at GST from the marketing angle. They understood that giving the impression that there was an independent security trustee would reassure investors. They do not appear to have been concerned about the fact that it was not actually independent.

1768. I repeat the point made earlier that it was no excuse or justification that Mr Huisamen (or Lewis Silkin) had reviewed the marketing documents or that Surge's staff were reading from a script. Mr Careless in fact knew that the relevant statement was false.

1769. Mr Careless did not ask questions to seek to establish how the representations about GST could be made. Instead, his concerns were to ensure that the absence of an online presence for GST did not affect bond sales. I find that he actually knew from the end of May 2016 at the latest that LCF was selling bonds by making false representations about GST.

1770. The next set of misrepresentations were those about LCF's business model. I have found that LCF represented that it was a genuine, legitimate, business which generated income and profit from lending activity, based on lending to SMEs, and that the sums invested were capable of generating the necessary returns; and that the only charges to borrowers were the one-off 2% fee and interest on the loan, which would be 12-20%.

1771. The first point relied on by the Claimants in relation to this allegation concerns the rates of interest.

1772. As to this, Mr Careless knew that LCF had promised to pay bondholders high interest rates of approximately 8%. The Claimants rely on the following: by September 2015, Mr Careless knew that the high interest rate was an outlier in the market and not credible; in November 2015, Ms Venn had repeated the concern that LCF's interest rates were an outlier; and by December 2015, the concern was expressed by prospective bondholders that the rates of interest were "too good to be true", which had been shared with others at Surge. The latter concern was repeated by prospective bondholders thereafter. The Claimants say that Mr Careless therefore held a targeted suspicion about LCF's ability to generate income to pay interest rates of around 8%. I do not accept this allegation to the extent that it is based only on the headline rate of interest. I find that the Surge Defendants indeed had some concerns as to whether LCF could pay their interest obligations, but they did not think much about this on its own. I find that this did not amount to a sufficiently targeted suspicion to constitute a ground for knowledge.

1773. The Claimants contended next that Mr Careless had actual knowledge that LCF's stated business model was incoherent, such that there was no plausible explanation of how LCF could pay high interest rates to bondholders through its income, because in July 2017, it was explained expressly in these terms on the MSE forum in a post which Surge's sales team thought was "clearly a problem". Mr Careless recognised that this was a valid concern and knew that Mr Thomson had not been able to answer it. The Surge Defendants did not answer these concerns. Mr Careless also knew that Mr Thomson's comments provided no answer to these concerns which were regarded by Surge as "clearly a problem" (and as Mr Russell-Murphy neatly put it, "He hasn't responded particularly well"). I find again that the parts of the MSE post of July 2017 about interest caused the Surge Defendants real unease about the ability of LCF to generate the rates of interest being paid to bondholders. However, again I do not consider that they had a sufficiently targeted suspicion about this, based simply on the high rates of interest being paid, to amount to blind-eye knowledge.

1774. I reach the same conclusion about the comments Mr Partridge made about the draft accounts in June 2017. Again, I conclude that the Surge Defendants had a real sense of unease but not a targeted suspicion about the levels of interest paid by LCF.

1775. The Claimants next contended that Mr Careless knew that the 25% commission meant that the business model as represented was unsustainable and that that presentation was therefore misleading.

1776. Mr Careless described the commission as "huge" and "insane" at the outset. In his email of 24 July 2015 Mr Partridge questioned how the business was sustainable since the fund (i.e. the available resources) would need to grow enormously to pay the 25% and the interest obligations to bondholders. The concerns in that email were never addressed. Mr Careless did not ask Mr Thomson to explain how LCF could make enough money from its borrowers to pay (a) the 25% commission, and (b) the interest and principal payable to bondholders. In my judgment the email raised a serious concern about the sustainability of the business model. Mr Partridge indeed articulated this concern. It was targeted and well-grounded.

1777. I have found (see [849] to [852] above) that:

i. The Surge commission was deliberately not disclosed to investors. It would have put them off. Mr Thomson and Mr Careless both knew that it would be material to any investment decision. He accepted this in evidence but said that Surge was merely the marketing firm and that it was not its decision what to include in marketing materials. Ms Venn accepted that if the 25% commission had been disclosed, it would have led to an extremely low conversion rate. She said that it would have been off-putting.

ii. The 25% fund-raising fee was not a market or going rate for mini-bonds.

iii. The reason why investors would have found the 25% off-putting is that they would not have been satisfied about the sustainability of LCF's business model, which was essentially described as making a turn on lending out funds to borrowers.

iv. Mr Careless, who had a far better understanding of LCF's business than members of the public, had real concerns about the sustainability of the business model in light of the 25% fee. He was generally sceptical about the mini-bond industry and yet here was a business offering "huge" or "insane" commissions. He did not, however, ask questions about it because he was anxious to make as much money as possible; and did not want to have his suspicions confirmed. He also persuaded himself that he would be able to justify Surge's actions by saying that it was simply the marketing agent and was not making the decisions about the business or how it was sold.

1778. Mr Careless of course knew that bondholders were expressly informed that about the interest payable by borrowers and the 2% arrangement fee; but that they were not informed about the 25% fee. He also believed that disclosing the 25% fee would have undermined bond sales as it would have caused bondholders to doubt the sustainability of the business model. In other words, he knew that the non-disclosure of the 25% was material to the decision of bondholders.

1779. I conclude that from July 2015 onwards, Mr Careless had a targeted concern about the sustainability of the business model as it was represented to bondholders. He deliberately refrained from asking questions about it because he did not want to stymie the business relationship and jeopardise the very large profits he stood to make. The commission was huge in his view; he thought the business model was probably not sustainable. He deliberately decided not to ask questions to seek to understand how LCF could afford to

pay the 25% commission and also pay interest and principal redemptions to bondholders. That was because he did not want to have his suspicions confirmed.

1780. I have also found that LCF also represented to bondholders that it was a genuine, legitimate, business and was a safe investment. The Claimants allege that Mr Careless had actual knowledge or at least a targeted suspicion that this was not true. Part of this this allegation is conveniently addressed by reference to the allegations that there was FCOB by reason of the operation of a Ponzi scheme and the misappropriation of assets: see [1796] to [1815] above and [1816] to [1825] below, respectively. For the reasons given there, I have concluded that those allegations are established. Mr Careless knew or had a targeted suspicion that LCF was not a legitimate, sustainable business. I find that he took a deliberate decision not to ask further questions because he did not want to confirm what he already suspected in these respects. I find that he had blind-eye knowledge that LCF was operating as a Ponzi scheme by December 2015 (or January 2016) at the latest; and actual knowledge of misappropriations by June 2016 at the latest.

1781. The Claimants also alleged that Mr Careless had other concerns about LCF which rendered this representation that the investment was a secure one false to his knowledge. They relied first on concerns that LCF would cease operating for regulatory reasons or through financial collapse. More specifically, the Claimants relied on concerns in January 2016 that the FCA considered that LCF's mini-bonds were being mis-sold. I am not satisfied that Mr Careless thought that this was likely to lead to LCF's demise.

1782. The Claimants relied next on the email of 28 September 2016, where Ms Venn said to Mr Careless that they needed to make sure that they were not unduly exposed if LCF were investigated or went bust. I am not satisfied that this establishes a sufficiently firm belief that LCF was imminently going to be shut down to ground knowledge. I find that Mr Careless saw this as a realistic prospect, but I am not satisfied that he therefore knew that the representations being made by LCF were fraudulent.

1783. The Claimants also alleged that by early December 2017, Mr Careless knew that the ISA bonds would not be legitimate or compliant investments, as a result of Ms Venn's explanation of the position which was supported by three sets of lawyers. I have made detailed findings about this episode in [1373] to [1404] above. As explained there Mr Careless, Surge, Mr Russell-Murphy and Ms Venn allowed Surge to continue to sell the LCF ISA bond knowing that there was (at least) a serious risk that it did not qualify for tax-free status. They actually thought that it did not. They also knew that the potential consequences were serious as it would mean that LCF was guilty of serious mis-selling, and that bondholders would be liable for tax they had assumed they would not have to pay. I find as a fact that Mr Careless had a targeted suspicion that LCF was misleading bondholders by selling the ISA bonds on the basis that investors would benefit from ISA protection. The Surge Defendants received advice that they should require an opinion from LCF's lawyers specifically addressing the point about transferability and they did not pursue this. Hence, they deliberately refrained from making inquiries. They did this because they did not want the truth to be confirmed. Surge and Mr Careless stood to receive large commercial rewards from selling the ISA bonds and they thought that responsibility would rest with LCF if things went wrong. They also thought they had enough evidence of challenging LCF to avoid responsibility themselves. I am satisfied that Mr Careless knew that representations were made to bondholders to the effect that the ISA bonds were a genuine ISA investment.

1784. However, I am not satisfied that the Claimants have pleaded any representations about the ISA treatment of the bonds, so I do not consider that this is a separate basis on which the Claimants are permitted to claim against the Surge Defendants. The Claimants have pleaded in the RRRAPOC that the Surge Defendants did not trust Mr Thomson or LCF because of the information furnished to Surge by Mr Thomson about the tax treatment of the ISAs, but that is not a case that LCF was conducting fraudulent trading by making false representations.

1785. LCF also represented that it had valid and adequate security. The Claimants contended in closing that Mr Careless knew that LCF was mispresenting the value and nature of its security to bondholders.

1786. The Claimants relied in closing on a series of events where the security held by LCF was questioned by Surge. These start with Mr Partridge's email of 10 December 2015, to the effect that there might be no assets to back the liabilities. It appears to me that that probably caused a real sense of unease but did not itself cause Mr Careless to have a sufficiently targeted suspicion that there was no security to ground knowledge.

1787. The Claimants relied next on the events of January 2016, when various offers were made about security, but what was being offered changed repeatedly and had an inconclusive outcome. Again, I conclude that the Surge Defendants had a sense of unease and did not know the position but did not have a sufficiently targeted suspicion that there was no security or that it lacked the values being discussed.

1788. Surge did seek information about the security, including valuations. The information which was finally provided on 12 April 2016 consisted of one facility agreement with L&TD, and a corporate guarantee from London Group Plc. Mr Partridge also raised further questions about the adequacy of the security in May 2016, when he produced the colour-coded spreadsheet. Again, I conclude that the Surge Defendants were uneasy about the security position but did not think or seriously suspect that LCF was lying about its existence or value.

1789. In October 2016 LCF published the accounts to 30 April 2016, audited by PwC. These showed security of £60.7 million. I have found that though Mr Careless did not read them, he was probably told about the £60 million figure by others within Surge's team. I have found that he took some comfort from the security figure. It seems to me that Mr Careless could properly suppose that PwC had conducted adequate audit work in relation to the valuation of the security. I have reached the conclusion that while he and others within Surge continued to have a sense of unease about the security and its value, he did not have a sufficiently targeted suspicion that LCF was mispresenting the position to bondholders.

1790. The Claimants contended next that Surge continued to have concerns about security after the PwC audit. The accounts were of course out of date, and LCF provided revised security values in February 2017. Again, I have concluded that Surge continued to think that there might be something amiss in the figures but did not have a targeted suspicion that LCF was actually mispresenting its security. The Claimants relied on the fact that LCF had marketed the bonds on the basis that the figure of £215 million was "verified", but that Surge did not know of any such verification and had some internal doubts about

the number. I do not find that the Surge Defendants had a sufficiently targeted suspicion that LCF was lying about this to bondholders. They did not know how the figure had been calculated or how it was made up. But nor did they know or have a targeted suspicion that LCF lacked support for the figures.

1791. The Claimants also relied on the internal discussions within Surge about the draft accounts in June 2017. These included the observation that the security figures were different from the statements previously made. The Claimants also relied on the internal communications in July and August 2017 showing that Mr Careless did not know what LCF's security comprised. Again, I conclude that these demonstrate that the Surge Defendants thought that something might be amiss but did not have a sufficiently targeted suspicion that LCF was mispresenting the position to bondholders.

1792. In February 2018 LCF published the accounts to 30 April 2017, audited by EY. These stated that LCF had security over assets valued at over £284 million. As explained earlier, I find that these accounts gave the Surge Defendants some comfort. I reach the same conclusions about these as applied to the PwC accounts in October 2016 (see [1789] above). I am unable to accept the Claimants' submission that the Surge Defendants placed no weight on them, including because they contained different figures from those that had been used by LCF in April 2017 (£215 million), because the Surge Defendants did not know what information had been provided to EY, or because they did not trust Mr Thomson to tell the truth. Nor do I consider that the Surge Defendants' reliance on them is entirely an ex post facto rationalisation. I think that they took a degree of comfort from the accounts at the time. I have explained this above.

1793. The Claimants also relied on the various statements made by Mr Thomson about security in February 2018, including that it was worth £1 billion, which they did not believe, and which was soon contradicted by Mr Huisamen. I find that Surge did indeed have serious doubts about Mr Thomson's figure of £1 billion. I also find, however that this was not used in representations made to bondholders.

1794. The Claimants also relied on Mr Russell-Murphy's statement in an email dated 14 August 2018 concerning LCF 2 that account managers would be able to talk about a large amount of security. I do not accept that this email carries the implication that the Surge Defendants thought that LCF's claims about security were not genuine. LCF 2 was embryonic, and Mr Russell-Murphy was simply describing what could be said once it was set up. This email does not suggest that anyone thought that once set up, any representation about security would be untrue.

1795. For these reasons, I am not satisfied that the Surge Defendants knew or had a sufficiently targeted suspicion that the representations made by LCF to bondholders about the existence or value of security were themselves false and misleading. I am satisfied that the Surge Defendants had continuing concerns about the existence and value of the security, but I find that these amounted to a general sense of unease, rather than a sufficiently targeted suspicion, to give rise to blind-eye knowledge. I make it clear that the Surge Defendants did not have a positive belief that the figures were accurate. On the contrary, they had misgivings about them. They asked for information which was not handed over and the information they were provided with was contradictory or improbable. In addition, as already explained, they regarded LCF as basically untrustworthy. Nor does Mr Careless's evidence that they found the security figures

given by LCF to be an answer to their concerns. Surge was profoundly concerned about many aspects of LCF's business.

1796. The Claimants contended next that Mr Careless knew that LCF was operating a Ponzi scheme.

1797. The starting point is to reiterate Mr Careless's general view about the risks inherent in the unregulated bond market. He knew that there had been previous scandals. He knew very little about the people running LCF. He therefore started with a sceptical disposition. Mr Careless thought from the outset that the entire operation of LCF (then SAFE) was inherently suspicious and that a natural reaction was to consider that it was a fraud ("rinse" in his words). I do not find that he positively believed at that stage that it was an investment fraud, but he thought that it had some of the appearances of one, including the willingness to pay 25% fees.

1798. Mr Careless was made aware on 24 July 2015 by Mr Partridge (if he had not already thought about this) that LCF's business was inherently unsustainable, on the basis of the term of the bonds which SAFE was selling, and the payment of 25% commission to Surge, as this required LCF's own assets to grow by 55% in two years. I have addressed this above in the context of the representation case. But it is also pertinent here: if LCF were unable to generate sufficient returns from its lending business, the obvious implication was that it would have to resort to using new bondholders' money to pay existing liabilities. There was never any suggestion that LCF could resort to other (third-party) funding arrangements to cover the shortfall. I find that Mr Careless, who had experience of the risks of the mini-bond industry, understood that there was a real risk of LCF using new bondholder money to pay off existing investors.

1799. Mr Careless also knew by September 2015 that new bondholder funds were in fact being used to meet Surge's commission payments, because bondholders paid sums to Buss Murton's client account, and Buss Murton immediately paid 25% of each receipt to Surge.

1800. Mr Careless also knew by October 2015 that the integrity of LCF's business model called for explanation, which is why the Surge sales team, who knew the same facts, considered that due diligence was called for, in order to address the suspicion that LCF may not be legitimate. He also knew that Surge had conducted no meaningful due diligence.

1801. Mr Careless trusted Mr Partridge. In October 2015 Mr Partridge likened Mr Golding (in their minds, the controller of LCF) to Bernard Madoff. I have addressed this at [908] to913] above. Mr Careless knew why Mr Partridge made the comparison. I have rejected Mr Careless's case that it was banter.

1802. I find that by October 2015 at the latest, Mr Careless had a targeted suspicion that LCF was a form of Ponzi scheme, in that it might well have to use money from new bondholders to meet its existing obligations to old ones.

1803. I find that Mr Careless made the deliberate decision not to inquire into how LCF could sustain its business and meet its liabilities without having resort to new bondholder's investments. As to this:

i. Mr Careless accepted that by 8 December 2015 he knew that due diligence was necessary, because he thought there was a real risk that something could be wrong with LCF (see [943] to [945] above). I find that he already knew that this information was required by October 2015.

ii. But he also knew that the due diligence required would probably be off-putting and might end the relationship.

iii. He therefore linked the due diligence to something run of the mill, rather than to the concern that it was a Ponzi scheme ("holly-shit-this-better-not-be-a-ponzi"). As already explained, the reason he referred to it as a possible Ponzi scheme was because that was the concern he and Mr Partridge had identified and what they needed to get to the bottom of.

iv. By this stage, Mr Careless also knew that the only borrower was a so-called "land bank", which (by its very nature) would not be generating any profits.

v. Mr Careless did not conduct the due diligence required to address his concern that something could be wrong with LCF. Mr Careless knew that the due diligence would require an understanding of where new investor funds were going and how payments to existing investors were being funded.

vi. I find that Mr Careless did this deliberately, because he did not want to have his suspicions confirmed. That would jeopardise Surge's 25% commission.

1804. The Surge Defendants again relied in closing submissions on the involvement of the various professionals. That does not assist them. I find as a fact that Mr Careless had a targeted suspicion that LCF was operating as a form of Ponzi scheme, that he actually considered the questions he would need to ask to ascertain the truth, and that he deliberately decided not to ask them. If he thought at all about the professionals, their only relevance was that their involvement would make it less likely that responsibility for any collapse would end up falling on the Surge Defendants.

1805. The Surge Defendants also relied on the fact that Mr Partridge did in fact ask for information about LCF's loan book and security. I address this below, but the immediate answer is that the information sought would not have answered the question whether LCF was being operated as a Ponzi scheme. To answer that question, it would have been necessary to understand where new investors' funds were going and how payments to existing investors were being funded (as Mr Careless accepted in his evidence).

1806. The Surge Defendants also submitted that what ultimately mattered was the existence and level of security and that they did not have a real concern about those matters. Bondholders would ultimately look to security and the Surge Defendants always thought that there was enough to meet the overall liabilities to bondholders. I do not accept that. Security was doubtless important, but it was not a panacea. The enforcement of security may take months or even years and may be complicated; the Surge Defendants knew that some of the interests of the borrowing companies were undeveloped land, some of it abroad; security values can themselves fluctuate. Mr Careless, an experienced businessman, knew this. Moreover, while I have found that the Surge Defendants did not know (or have blind-eye knowledge) that LCF was actively lying about its security, they

did have real continuing concerns about it, and were never given satisfactory evidence about its nature or value.

1807. For these reasons, I conclude that by the end of October 2015 at the latest, Mr Careless had a targeted suspicion that that LCF could not, and would not, generate enough income to enable it to pay commission to Surge or to make payments to existing bondholders, that it could only do so from new bondholder investments, and that, rather than being a sustainable business, LCF was in fact a vehicle for raising money for Mr Golding and his associates, i.e. that LCF was operating as a Ponzi scheme. Mr Careless deliberately decided not to ask for the information which would confirm or dispel this suspicion.

1808. Mr Careless instead made "light touch" inquiries of Mr Thomson regarding how LCF operated. These were not, however, directed to the real questions about the application of new bondholders' investments and how LCF was funding its liabilities to existing investors.

1809. If I am wrong in finding knowledge as at the end of October 2015, I find that the Surge Defendants had such knowledge by the end of January 2016. As to this:

i. The Surge Defendants continued into January 2016 to have the targeted suspicion that LCF was a Ponzi scheme. Mr Partridge drew the comparison again in his 7 January 2016 email.

ii. On 29 January 2016 Ms Venn referred to the "missing piece of the 'is it a ponzi' jig saw: we need access to the lending book, inclusive of details re the security in place …".

iii. This followed discussions with Mr Careless. LCF did not provide the information that was sought by Mr Partridge. It did not provide full information about its borrowers or the valuation of its security.

1810. Mr Careless did not thereafter ask questions of Mr Thomson and Mr Golding which were intended to elicit the truth about the facts which he suspected. I find that was a deliberate decision because he did not want to confirm his suspicions and jeopardise the commercial relationship with LCF.

1811. Mr Careless said repeatedly in his evidence that he took reassurance from the audits of the accounts by PwC. This does not assist on this aspect of the case for several reasons. First, the history. As explained above, the Surge Defendants were suspicious about LCF operating as a Ponzi scheme from late 2015 onwards. But the PwC accounts were not published until October 2016. Second, Mr Careless did not read the PwC accounts and there is no evidence that they affected his concerns about LCF operating as a Ponzi scheme. Third, there is nothing in the accounts to suggest that the auditors considered how the liabilities of existing investors were being funded by the business. Fourth, the PwC accounts themselves raised questions about LCF's business. LCF's accounts contained a "profit" figure of £148,550 which was very substantially less than the profit being made by Surge.

1812. Moreover, by October 2017 at the latest, Mr Careless knew and shared the view that LCF was a company that could not be trusted. Mr Careless knew that Ms Venn was so concerned about working with LCF that she was feeling unwell. I have referred to

numerous examples before this of internal Surge communications (including with Mr Partridge) to the effect that Mr Thomson was a liar or was not to be trusted in relation to LCF. By October 2017, their view that he was not to be trusted was firmly grounded. This is at odds with the suggestion that the published accounts put the Surge Defendants' concerns that the business was not legitimate to rest.

1813. Further, as found above, the Surge Defendants knew from early 2016 onwards that LCF was deliberately misleading the public about the nature of its business. This again undermines the suggestion that the Surge Defendants genuinely saw the accounts as an answer. In reality, the Surge Defendants saw the audited accounts as a helpful marketing tool rather than as a clean bill of health.

1814. Mr Careless knew also that his concerns about the incoherence of LCF's business model were being circulated in the public domain. Mr Careless also expressed concern about LCF opening itself to further public exposure and did not want LCF to stick its head above the parapet.

1815. The Surge Defendants emphasised that they were not insiders within LCF and that they had far less access to information about its affairs than the various professionals. They said that they did not know how the money was in fact being used. They did not know about the SPAs or the other payments of money to the individual Defendants. They did not know about the round-trip transactions whereby old investors were paid by money from new ones. They therefore did not know of the Ponzi scheme that was operated. I do not find this persuasive. As the case law shows a person is treated as a knowing participant if they know that there is FCOB by a company without knowing the details of the fraud. I have found above that LCF was in fact operating as a Ponzi scheme. The Surge Defendants had a targeted suspicion that it was operating as a Ponzi scheme, even though they did not know the details (the SPAs etc.) and deliberately refrained from making inquiries (for fear of what those would confirm). That is sufficient to constitute knowledge.

1816. I turn to the Claimants' allegation that the Surge Defendants knew of FCOB by LCF by misappropriating assets.

1817. In this regard, Mr Careless knew that Surge was paying Mr Thomson 0.5% of gross bondholder investments which had been received by LCF in the previous month. This arrangement started in June 2016.

1818. As explained in detail above, I have concluded that there was no legitimate basis for payments of this nature. Mr Careless therefore knew that Mr Thomson was making an illegitimate commission from his position, and this was ultimately funded from LCF's assets.

1819. The Claimants contended that in July 2016, Mr Careless knew that LCF was making payments to Mr Golding and others, because Mr Careless knew that LCF was making payments sufficient to cause LCF's bank account payment limit to be hit. I am not satisfied that he had this understanding based on that evidence alone: see [1140] to [1142] above.

1820. On the other hand, I have found that Mr Careless knew that from September 2017 Mr Golding was being paid 1% of gross bondholder investments which had been received by LCF in the previous month, because these sums were being paid to Mr Golding through Surge with Mr Careless's approval, and these payments coincided with the cessation of equivalent payments of 0.5% which Mr Careless knew were being made to Mr Thomson. Mr Careless had no rational explanation for these payments, and I have concluded that there was no legitimate basis for payments of this nature. Mr Careless knew Mr Golding ultimately controlled LCF, and was connected to its borrowers.

1821. There is an issue whether these payments (first to Mr Thomson and then to Mr Golding) amount to a misappropriation of LCF's assets. It might be said that LCF paid 25% to Surge for its services and that Surge decided to pay a percentage to Mr Thomson and Mr Golding, respectively. At that stage, the money was the property of Surge, not LCF. In my judgment the labelling is unimportant; what matters is the substance. I have found that the arrangements were made with Mr Thomson and Mr Golding, respectively, in order to induce them to maintain Surge's fee at 25%. Each of the arrangements was for the payment of a percentage of LCF's gross receipts. In each case, the payment was made by Surge in the belief that the recipient was in a position to procure the continuation of the 25% arrangement. I draw the probable inference that Mr Careless thought that if he did not agree to the payments, Surge would be materially worse off than it was by making the payments. The substance was that a 25% share of the new money raised from bondholders was paid from LCF to Surge and part of that 25% was paid monthly to Mr Thomson or Mr Golding. Mr Thomson and Mr Golding were benefiting by virtue of their position as controllers of LCF.

1822. In my judgment, even if the property in the money passed from LCF to Surge and then to Mr Thomson or Mr Golding, in substance these arrangements involved the misapplication of LCF funds. Another way of analysing the arrangements is that if these secret commissions had not been paid, LCF would have had to pay less of its assets out to Surge.

1823. Mr Careless therefore had actual knowledge by the time when these arrangements were made (in June 2016 and September 2017 respectively) that Mr Thomson and Mr Golding were involved in misappropriating LCF's assets.

1824. The Claimants relied on Mr Russell-Murphy's email of 29 January 2018 concerning LCF 2 that "[t]hey want their own man, so funds get utilised their way". Mr Careless agreed with this statement based on his own knowledge: "Yes, precisely what John says". Mr Careless did not want this to be explained in writing. Mr Careless knew that LCF 2 was to be run in the same way as LCF. I consider that this is further evidence that Mr Careless knew that the intention was for Surge to market LCF 2, and that the money raised from bondholders would be applied in making loans to Mr Hume-Kendall and Mr Golding's businesses. I am not satisfied that this email on its own would have been sufficient to show that Mr Careless knew that the funds raised would be misappropriated.

1825. The Claimants also contended that by at least July 2018, Mr Careless had actual knowledge of the mechanisms used by those involved in LCF to misappropriate funds, as a result of his knowledge of the Isle of Wight deal. I find that Mr Careless knew that the transaction involved the use of sums from LCF, through a connected borrower and

an uncommercial transaction, in order to generate substantial payments to Mr Golding, and to himself. I have made findings about this above [1504] to [1519] above.

1826. To summarise, Mr Careless knew that the Isle of Wight deal involved Prime RDL purchasing an asset worth £2.5 million for £5 million using LCF's funds, with £2.5 million being paid as profit to Mr Golding, Mr Careless and Mr Russell-Murphy (and with no commercial justification for the uplift). Mr Careless also knew that Prime RDL was connected in some way to Mr Golding, so that Mr Golding was effectively on both sides of the deal. Mr Careless accepted in his evidence that this involved LCF's assets being siphoned off to Mr Golding. I find that Mr Careless knew that the transaction involved a misappropriation of LCF's assets. He knew this was morally reprehensible, which is why he later lied about it.

1827. For these reasons, I conclude that (in the respects set out above) the Surge Defendants knew that there was FCOB by misappropriation of LCF's assets. As explained above, it does not matter, for the purposes of liability under the section, that they did not know the details or full extent of the misappropriations.

1828. As explained earlier, dishonesty is not strictly an element of the statutory test. However, a finding of knowing participation in the FCOB necessarily entails dishonesty. I should therefore test my conclusions thus far by considering whether the Surge Defendants were dishonest.

1829. I have already explained a number of times that the Surge Defendants relied in closing on the role and involvement of the professional advisers, Mr Huisamen and the auditors. They also stressed that the people behind LCF appeared to be rich and successful. I have addressed the professionals, Mr Huisamen and the auditors in addressing the specific allegations of knowledge and have concluded that their involvement in the transactions was in some respects a comfort to the Surge Defendants (for instance concerning the value of security), but in other respects was not. The involvement of professionals is not a blanket answer. As for the role of Mr Thomson and the other people behind LCF, at the outset Surge knew next to nothing about them. Mr Careless knew that the unregulated bond market was precarious. The evidence demonstrates that the Surge Defendants soon concluded that Mr Thomson was a liar and that he could not be trusted. Mr Careless had to pay him 0.5% of the gross receipts to maintain his own fees. Mr Golding's integrity was equally doubtful. He pressurised Mr Careless into the 1% fee arrangement (which I have found to have no legitimate basis) and was going to share half of the profit on the Isle of Wight deal. In any case, I have taken into account Mr Careless's views of the other Defendants when reaching conclusions about the knowledge of the Surge Defendants.

1830. The Surge Defendants also emphasised that Mr Careless was a former soldier and policeman and that he had successfully established businesses previously. They said that he would not have jeopardised his reputation and way of life by participating in a fraud. I have given these points due weight. However, the evidence shows that he was intensely materialistic and that he ranked the pursuit of money highly. I have also reached the conclusion that he and others within Surge thought that if LCF collapsed, any legal responsibility would fall on the directors and professional advisers of LCF and that Surge would not be liable. I find that Mr Careless was prepared to take the risk of continuing to market the bonds, even if LCF might well come unstuck. The personal rewards were huge (millions of pounds annually) and the risk (as he saw it) was contained.

1831. In the light of my detailed findings about Mr Careless's subjective state of mind, I am satisfied that, applying the objective test of dishonesty, Mr Careless's conduct in continuing to market LCF's bonds to members of the public and receive commissions from the new investments was dishonest by the objective standards of ordinary decent people.

1832. The Surge Defendants are therefore liable for fraudulent trading. The quantum of any contribution is addressed below.

Participation and knowledge of Mr Russell-Murphy?

1833. I have described the involvement of Mr Russell-Murphy in the business of LCF and Surge in detail above. Mr Russell-Murphy was intimately involved in the business of Surge. He also had an earlier involvement with Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. Mr Russell-Murphy said in an email of 23 September 2015 to Mr Careless and Mr Jones that Mr Golding, "the major shareholder of LCF," had been a client of his for over fifteen years.

1834. Mr Russell-Murphy was involved in SAFE, as described in detail above. Mr Russell-Murphy was also present at the 2015 introductory meetings with Mr Careless and Ms Venn. Mr Russell-Murphy often acted as a point of contact between Mr Golding and Surge.

1835. I find that the Surge Defendants regarded Mr Russell-Murphy as being closely associated with Mr Golding, describing him as "one of Spencer's lot" (see [985] above). They regarded him as untrustworthy.

1836. I have already covered the evidence that the Claimants rely on against Mr Russell-Murphy in considerable detail. In making findings here, I shall summarise and avoid repetition where possible.

1837. GP was Mr Russell-Murphy's company. He was its controlling mind. I find that his knowledge and acts are to be attributed to it.

1838. The first issue is whether Mr Russell-Murphy participated in the FCOB of LCF.

1839. As to this, Mr Russell-Murphy agreed the commission of 25%, which formed the basis of the sums payable to Surge. After Surge became involved, he agreed with Mr Careless that he would work with Surge in return for payments equal to those received by Mr Careless himself. As explained above, this amounted to many millions of pounds over the three-and-a-half years before the collapse of LCF. I find that Mr Russell-Murphy was highly motivated by the prospects of making huge amounts through selling LCF's bonds. He saw LCF as a cash cow. In the event, Mr Russell-Murphy (or GP) was paid millions of pounds deriving (as he knew) from the bondholders.

1840. Mr Russell-Murphy understood how the mini-bonds were marketed to bondholders. He was involved from the earliest stages. He was tasked to convert leads into bond sales for LCF. Mr Russell-Murphy then agreed to work as Surge's sales director and therefore

occupied a senior role in selling LCF's bonds to prospective bondholders (including by presenting himself as employed by LCF).

1841. Mr Russell-Murphy was involved in reviewing and commenting on LCF's marketing materials from the outset. Mr Russell-Murphy was involved in selling LCF's bonds as Surge's involvement began to have a substantial impact on the success of LCF, and during this period, Mr Russell-Murphy participated in furthering and facilitating the sales efforts of Surge's staff.

1842. Mr Russell-Murphy was involved in commenting on LCF's website and proposed changes to it.

1843. Mr Russell-Murphy participated in actively marketing LCF's ISA bonds to prospective bondholders. He went on home visits to persuade particularly high value investors to buy LCF bonds.

1844. Mr Russell-Murphy was involved in setting up new comparison websites to promote LCF.

1845. Mr Russell-Murphy was involved in advising Mr Careless, Surge and Ms Venn about marketing LCF's bonds to prospective bondholders and was regularly consulted in this regard. Mr Russell-Murphy's efforts were instrumental in the success of LCF in selling mini-bonds. This was so before and after the engagement of Surge.

1846. Mr Russell-Murphy and GP received very substantial sums which he knew were derived from the business activities of LCF.

1847. On the basis of [1839] to [1846] above, I find that Russell-Murphy participated in the FCOB of LCF.

1848. Turning to knowledge, I shall follow the same pattern as followed above, and by analysing whether Mr Russell-Murphy's knew that LCF was making false representations to bondholders. Mr Russell-Murphy knew the contents of the IMs and other marketing materials. To the extent that the representations went beyond the express words used, I find that he understood the representations to include those implications. The implications I have found to be included in the statements were obvious and there is no reason to think that Mr Russell-Murphy did not understand them in that sense.

1849. The first set of representations concerns LCF's security. For the same reasons as given in relation to the Surge Defendants (see [1795] above), I find that while Mr Russell-Murphy had a general and real sense of unease about the security he did not have a sufficiently targeting suspicion to constitute knowledge that the values being given by LCF for security were false. As explained in relation to the Surge Defendants, I am not satisfied that he had a positive belief that those figures were accurate and indeed he had a concern that they were not. But he did not have what in law amounts to knowledge that they were false.

1850. The next set of representations concerns the due diligence said to have been undertaken into LCF's borrowers.

1851. I find that, as a result of Mr Russell-Murphy's knowledge in connection with SAFE, Mr Russell-Murphy actually knew that no due diligence was being or would be conducted in connection with LCF's borrowers. From October 2015 at the latest, Mr Russell-Murphy knew that LCF did not have a lending page, which would mean that LCF would not have any due diligence to conduct. He knew that there was no lending department at LCF. Mr Russell-Murphy was involved in efforts to create a lending page, to be relied upon in furthering the selling of LCF's bonds to prospective bondholders. Mr Russell-Murphy also knew from about December 2015 onwards that LCF was in fact lending to a small group of associated borrowers. Mr Russell-Murphy thought throughout his involvement that it would have been in the interests of LCF to have a lending page and to be able to give some details of borrowers. Surge asked for this information so that it could present it to bondholders.

1852. In the light of these facts, I find that Mr Russell-Murphy had a targeted suspicion by the end of December 2015 at the latest (and continuing thereafter) that LCF did not in fact conduct its lending activity in the manner represented to members of the public, in the sense of applying strict lending criteria or undertaking due diligence about the borrowers. This concern endured throughout 2016, 2017, and 2018, and was never properly addressed by LCF. Mr Thomson made a series of wholly unconvincing excuses, which Mr Russell-Murphy did not believe. Mr Russell-Murphy deliberately avoided asking questions about this because he preferred not to confirm what he suspected.

1853. This concern endured throughout the remainder 2015, 2016, 2017, and 2018, and was never satisfactorily addressed. Mr Russell-Murphy knew in November 2017 that Mr Thomson continued to be reluctant to provide any examples of businesses obtaining loans from LCF. Mr Russell-Murphy knew in February 2018 that concerns expressed on MSE about a lack of any lending activity by LCF had circulated among Surge's sales staff in February 2018, which gave rise to the concern that LCF was not a legitimate operation.

1854. Mr Russell-Murphy deliberately refrained throughout this period from raising inquiries about the lenders and the due diligence activities. An honest person who was aware of the way the bonds were being sold to the public would have wanted to understand the steps that were being taken to assess borrowers. I find that he had blind-eye knowledge from the end of December 2015 at the latest that these representations were false.

1855. The next set of representations concerns lending to numerous unconnected SMEs.

1856. Mr Russell-Murphy knew that LCF was representing to bondholders that it was engaged in lending to the SME market. I find that he understood that LCF was thereby giving the impression that it was lending to numerous, unconnected, arm's length borrowers. He knew that SAFE was actually lending to companies associated with Mr Hume-Kendall and Mr Golding and nobody else. I find that Mr Russell-Murphy knew that LCF, as the same company as SAFE and operated by the same individuals, would continue lending funds to connected borrowers, such that he knew that the representations would continue to be false from its inception.

1857. Mr Russell-Murphy also knew that Mr Thomson was not willing to provide information about LCF's loan book, such as the average loan size.

1858. Mr Russell-Murphy deliberately avoided asking questions about this because he preferred not to confirm what he suspected.

1859. I find that Mr Russell-Murphy had (at least) blind-eye knowledge that LCF's representations about unconnected borrowers was false by the end of December 2015, for the same reasons as apply to the Surge Defendants (see [1752] above). If this is wrong, he had such knowledge by 25 January 2016 when Ms Venn's email explained to Mr Russell-Murphy (along with Mr Careless) that: (i) Mr Thomson, who ostensibly ran LCF, had explained that all of LCF's loans were connected to Mr Golding, who ultimately ran LCF; and (ii) Mr Thomson regarded this as sensitive information and did not want it to be communicated in writing.

1860. In any event, for the same reasons as apply to the Surge Defendants, I find Mr Russell-Murphy had actual knowledge of the falsity of these representations by July 2016.

1861. Mr Russell-Murphy also knew that the accounts prepared by EY in February 2018 did not provide any assurance. Mr Russell-Murphy knew (including as a sales director of Surge) about the problems and inconsistencies regarding LCF's security and loans which had been circulated among Surge's staff, and that the revelation that LCF only loaned to 11 borrowers falsified the representations which Surge had been making on behalf of LCF.

1862. Mr Russell-Murphy also had actual knowledge in February 2018 that these representations were false as a result of a conference call with Mr Thomson and Ms Venn, in which Mr Thomson confirmed the representation to be false, on account of LCF lending only to 7 borrowers.

1863. Mr Russell-Murphy had further actual knowledge by at least August 2018 that LCF was a vehicle for lending to Mr Hume-Kendall and Mr Golding, as a result of his involvement with LCF 2, because, in that context, he had explained to others that LCF 2 "needs to issue a loan to SHK/SG prior to going live", i.e. lending to Mr Hume-Kendall and Mr Golding was in nature of LCF's activities and was being replicated for LCF 2 (see [1751] above).

1864. The Claimants next relied on the misrepresentations about LCF's loan agreements. They alleged that Mr Russell-Murphy knew that there were no written loan agreements. This was essentially based on his knowledge that LCF was prepared to disburse amounts originally to himself and later to Surge without an agreement. This allegation is not made out for the same reasons as given above for the Surge Defendants. Moreover, LCF had entered some loan agreements with some of its borrowers and one cannot infer that Mr Russell-Murphy knew that LCF had not entered written loan agreements with borrowers.

1865. The next set of representations concerns the statement that GST was an independent security trustee. Mr Russell-Murphy received the email from Mr Partridge in May 2016. For the same reasons as are given in relation to the Surge Defendants at [1769] above, I find that by the end of May 2016 Mr Russell-Murphy had actual knowledge of the connections between LCF's borrowers and GST and that LCF was misrepresenting the role of GST to bondholders.

1866. The next set of representations concerns LCF's business model. Mr Russell-Murphy had the same information about these matters as the Surge Defendants. For reasons given in [1779] above, I find that Mr Russell-Murphy knew from July 2015 at the latest that the business of LCF was unsustainable because it could not both pay a commission of 25% and make sufficient income to repay bondholders the promised rates of return. Though he did not receive Mr Partridge's email of 24 July 2015, Mr Russell-Murphy was an experienced investment advisor and I find it probable that he had the same concerns as Mr Partridge articulated there. I find that he had a targeted suspicion that the commission was unsustainable and he deliberately refrained from making the inquiries an honest person would have made about the business model. This was because he did not want to confirm what he suspected; he wanted instead to carry on earning potentially huge commissions himself.

1867. The Claimant have not, however, established that Mr Russell-Murphy had knowledge that the interest rates charged by LCF (taken on their own) rendered the business model unsustainable. The reasons are the same as those given above for the Surge Defendants.

1868. I also reach the same conclusions for Mr Russell-Murphy as for the Surge Defendants in relation to the representations about ISA status: see [1783] above. As a matter of fact, by December 2017, Mr Russell-Murphy knew that there was at least a real risk that what was being said to investors was untrue: i.e. they were being told falsely that bonds would attract ISA protection. I also find that he was more interested in laying a paper trail than getting to the truth. However, as with the Surge Defendants, no case based on representations about ISA status has been pleaded.

1869. I have found that LCF also represented to bondholders that it was a genuine, legitimate, business and was a safe investment. The Claimants allege that Mr Russell-Murphy had actual knowledge or at least a targeted suspicion that this was not true. As with the Surge Defendants, this allegation is conveniently addressed by reference to the allegations that there was FCOB by reason of the operation of a form of Ponzi scheme and the misappropriation of assets: see [1871] to [1879] below, respectively. For the reasons given there, I have concluded that those allegations are established in part. For these additional reasons, Mr Russell-Murphy knew or had a targeted suspicion that LCF was not a legitimate, sustainable business, and was therefore being misrepresented to investors in this respect too. I find that he took a deliberate decision not to ask further questions because he did not want to confirm what he already suspected in these respects.

1870. There were also other respects in which the Claimants alleged that Mr Russell-Murphy knew that the business was being misrepresented. In light of the findings already made, it is unnecessary to address each such allegation here.

1871. I turn to the allegation that Mr Russell-Murphy knew that LCF was operated as a form of Ponzi scheme.

1872. Mr Russell-Murphy worked with Mr Thomson, Mr Hume-Kendall, and Mr Golding in connection with SAFE. Mr Russell-Murphy knew the terms on which SAFE proposed to raise funds from investors, and that sums paid into SAFE would not be lent out in line with what was described in its advertising materials, "ie cash for Simon and Spencer etc".

1873. Mr Russell-Murphy was paid a commission of 20% for selling SAFE's bonds, which later rose to 25%. I have found that Mr Russell-Murphy had blind-eye knowledge that the business model was unsustainable in that there was no underlying business capable of generating the returns needed to pay coupons and redemptions to bondholders and also paying these huge commissions.

1874. Mr Russell-Murphy also thought that Mr Golding maintained overall control of LCF. He knew that the funds raised were going to be used to fund Mr Golding's businesses.

1875. Mr Russell-Murphy knew that LCF was operating in the same way as SAFE in paying commission rates of 25% from new investments, and attracting new investments on the basis of the same ostensible business model. I find that Mr Russell-Murphy had a targeted suspicion from the outset of Surge's involvement that the only way that that LCF would be able to fund payments to bondholders was from new investors' funds. Mr Russell-Murphy knew that LCF was providing Surge with very little information about its supposed lending. He also knew (see above) that LCF was misleading investors about its underlying business; and that the 25% commissions were concealed from investors. I find that he knew that this concealment of the commissions was deliberate, because investors would have been irretrievably put off. I conclude that Mr Russell-Murphy had a targeted suspicion that LCF was being operated as a Ponzi scheme in the sense of suspecting that all returns to old investors were paid from funds from new ones and he had no basis for thinking that there was any underlying profitable business from which those returns were being paid.

1876. Mr Russell-Murphy deliberately did not make any inquiries to seek to understand how the business of LCF was sustainable or how investors could be paid from resources other than new investors' funds, because he did not want to confirm his suspicions. I conclude that he had blind-eye knowledge that LCF was being operated as a Ponzi scheme from at least the end of July 2015.

1877. I turn to the allegation that Mr Russell-Murphy knew that LCF's funds were being misappropriated.

1878. I find that Mr Russell-Murphy knew that Mr Golding was being paid 1% of gross bondholder funds which had been received by LCF in the previous month by Surge. He acted as the conduit to Surge of invoices from Mr Golding and was involved in email and text communications about the negotiation of Mr Golding's percentage. For the reasons set out in [1820] to [1823] above, I find that this was a misappropriation of LCF's assets; and that Mr Russell-Murphy knew about it.

1879. I also find, for the reasons set out in [1825] above, that by at least July 2018 Mr Russell-Murphy had actual knowledge of the mechanisms used by those involved in LCF to misappropriate funds, as a result of his knowledge of the Isle of Wight deal. Mr Russell-Murphy participated actively in this proposed transaction and knew that it involved the "borrowing" of sums from LCF, by a connected borrower, through an uncommercial transaction, to generate personal profits for those behind LCF, including Mr Golding.

1880. I have also considered whether Mr Russell-Murphy was dishonest. In the light of my detailed findings about Mr Russell-Murphy's subjective state of mind, I am also satisfied that, applying the objective test of dishonesty, his conduct in continuing to market LCF's

bonds to members of the public and receive commissions from the new investments was dishonest by the objective standards of ordinary decent people.

1881. Mr Russell-Murphy and GP are therefore liable for fraudulent trading. Quantum is addressed below.

Participation and knowledge of Mr Sedgwick?

1882. Mr Sedgwick chose not to give evidence. He understood that this meant that his witness statement could not be referred to and that it carried the risk of adverse inferences about the evidence he would have been able to give. As already stated, I conclude that the court should draw such inferences.

1883. Mr Sedgwick was a longstanding associate of Mr Hume-Kendall and Mr Golding. He acted as a solicitor for the London Group. He also acted in connection with various personal affairs of Mr Hume-Kendall and Mr Golding. He was also involved in investment transactions with Mr Hume-Kendall and Mr Golding before LCF, including the Sanctuary scheme.

1884. Detailed findings are made above showing that Mr Sedgwick was involved in the backdating of numerous transactional documents. This was done to conceal the true position from the auditors of LCF and third parties. He was also involved in producing and backdating the alleged July 2015 MOU and SPA. I find that this was done to enable Mr Thomson and others to mislead the FCA (after the closure of LCF's business at the end of 2018) about the receipts by Mr Thomson of sums derived from LCF. Despite his professional position as a solicitor, Mr Sedgwick was therefore prepared to produce false documents.

1885. Detailed findings have been made above concerning the involvement and participation of Mr Sedgwick who participated in the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA, and the LPT SPA. Mr Sedgwick was centrally instrumental in designing and drafting each of those SPAs. I have decided in respect of each of those transactions that it was not a genuine commercial sale but was designed to justify the channelling of payments from LCF to the four individual defendants and others, and that Mr Sedgwick knew this: see [508] above, for the Lakeview SPA and its variants; [567] above, for the Elysian SPA; [630] above, for the Prime SPA; [697] above, for the LPE SPA; and [727] above, for the LPT SPA.

1886. Numerous aspects of these transactions showed them to be uncommercial and artificial. These included that the underlying assets were seriously overvalued; the prices were unsupportable; there were no real negotiations; and the buyers did not instruct independent advisers. Mr Sedgwick knew all these things. He also knew that the sales were funded by loans from LCF and that the sales led to tens of millions of pounds being transferred to the four individuals; in other words that money would flow from LCF to the four of them (and others): see e.g. [597] and [614] above.

1887. Other significant findings concerning Mr Sedgwick include the following:

i. Mr Sedgwick did not believe that LOG had validly assigned its rights against Atlantic Petroleum to Atlantic Petroleum Support Limited: see [543] above.

ii. Mr Sedgwick knew that the GRP subsidiaries' facilities were seriously under-secured: see [574] above.

iii. Mr Sedgwick suggested bringing CV Resorts within the Lakeview SPA by falsely pretending that it had been a subsidiary of LCCL at a date when that was not the case: see [471] above.

iv. Mr Sedgwick drafted falsely backdated agreements between LOG and LPE Enterprises in January 2019 to mislead the board of LOG that the transactions had been entered into in June 2018. Mr Sedgwick knew that the board was being misled because he attended a meeting in February 2019 at which the issue was discussed: see [678] above.

1888. I find that as a result of the conduct set out above: (i) Mr Sedgwick furthered and facilitated LCF's fraudulent trading; and (ii) Mr Sedgwick participated in and furthered the transactions between London Group companies, as well as between London Group companies and LCF, which in each case provided the occasion for LCF's fraudulent trading.

1889. In this regard, the detailed findings contained earlier in the judgment establish that Mr Sedgwick was centrally involved in creating and implementing a series of artificial, uncommercial transactions, which were designed and used to channel funds from LCF to the first four individual Defendants and others. These transactions were intimately connected with the business of LCF in that the amounts drawn down by the various borrowers under them were applied in making payments under the transactions. Moreover, many of the assets over which security was supposedly given to LCF in return for such lending were supposedly acquired by the borrowing companies under those transactions. The lending would not have happened but for the SPAs. I am satisfied that Mr Sedgwick's involvement in the creation and implementation of the transactions, including the process by which the proceeds of the SPAs were distributed to the other Defendants, constitutes participation in the FCOB by LCF.

1890. Mr Sedgwick also received payments which were ultimately funded by LCF and paid through various companies including London Group companies, Sands Equity and LV Management. The parties have agreed that payments of £559,781 were made. The Claimants have identified further payments bringing the total to £779,643, on which Mr Sedgwick has not commented. I am satisfied that the receipt of these sums is capable of constituting participation in the FCOB by LCF (subject to the element of knowledge, addressed below). Mr Sedgwick contended that he received these sums for good consideration, i.e., the extensive legal work he undertook for the London Group and others and that this cannot amount to participation. I reject that argument. The fact that consideration may be given for payments from a company where there is FCOB does not prevent the receipt amounting to participation; as the cases show, a creditor may participate by receiving money from a company where the creditor knows that it represents the proceeds of the fraudulent trading.

1891. I turn next to the issue whether Mr Sedgwick had the required knowledge.

1892. As just explained, Mr Sedgwick was aware that the FCOB by LCF included lending to companies which applied the loans to make payments to the four individuals (and some

others) under the five SPAs. I have found that he knew that these transactions were artificial contrivances specifically designed to enable sums to be channelled, without proper justification, to the four individuals and others. The inevitable result of the transactions was that LCF's lending would advance its assets to those companies and would become very seriously unsecured. This would necessarily jeopardise the economic interests of the bondholders. For these reasons, I conclude that Mr Sedgwick knew that there was FCOB by LCF (from at least the dates of each of the SPAs respectively).

1893. I also find that Mr Sedgwick knew that LCF was dishonestly misrepresenting its business to bondholders in a number of respects.

1894. Mr Sedgwick knew the contents of the literature by which sums were raised from prospective bondholders by SAFE, which was later rebranded as LCF. I find that he was aware of the terms of LCF's marketing literature. He was directly involved in some of the early versions, and I find it more probable than not (given the extent of his overall involvement in the affairs of the London Group) that he read the various versions of the IMs as they were published. To the extent that the representations went beyond the express words used, I find that he understood the representations to include those implications. The implications I have found to be included in the statements were obvious and there is no reason to think that Mr Sedgwick did not understand them in that sense.

1895. Moreover, Mr Sedgwick was involved in the preparation of a draft exclusivity agreement between Mr Hume-Kendall, Mr Golding, Mr Careless and Mr Russell-Murphy in February 2016, which referred to the raising of sums by LCF in materially the same way it had raised them for SAFE. Mr Sedgwick thus had actual knowledge of the means by which LCF was raising sums from prospective bondholders: see [336ff] above.

1896. I find that Mr Sedgwick knew that the representations made by LCF were false in several respects.

1897. First, I find that Mr Sedgwick knew that LCF's representations about its due diligence into borrowers were false:

i. Mr Sedgwick knew that no financial due diligence was being conducted on LCF's borrowers, or would ever be conducted on LCF's borrowers, because LCF's borrowers were all connected with the London Group (for which he was the lawyer).

ii. Mr Sedgwick knew that LCF did not in fact undertake due diligence. He knew, for instance, that L&TD had defaulted in filing its accounts and exceeded its facility limit, and that LCF was party to the creation of documents whose purpose was to give the false impression that neither of these things had taken place: see [493] to [495] above.

iii. Mr Sedgwick knew that the "support companies" were newly incorporated, had no assets and no business, and would nevertheless take over debt owed to LCF: see [552] above.

1898. Second, I find that Mr Sedgwick knew that LCF's representations about lending to numerous arm's length borrowers on commercial terms were false:

i. Mr Sedgwick knew that the London Group was beneficially owned by Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding.

ii. Mr Sedgwick knew about the terms of the Golding-SHK Agreement, which stated that LCF was to be responsible for all fundraising for London Trading (and its group of companies). Mr Sedgwick knew these were connected to Mr Hume-Kendall and Mr Golding. Mr Sedgwick also knew from the draft exclusivity agreement of February 2016 (which he drafted) that LCF was in reality a vehicle for raising funds for companies associated with Mr Hume-Kendall and Mr Golding: see [336ff] above.

iii. Mr Sedgwick knew of the amount of lending by LCF to the London Group companies and other entities associated with Mr Hume-Kendall and Mr Golding. I find on the balance of probabilities that he knew LCF had no other lending.

iv. Hence, Mr Sedgwick knew that, rather than being in the business of lending funds on arm's length terms to borrowers in the SME market, LCF was in truth a fund-raiser for Mr Hume-Kendall and Mr Golding's vehicles.

1899. Third, I find that Mr Sedgwick knew that LCF's representations about it always having loan agreements in place before lending were false:

i. Mr Sedgwick knew the circumstances in which LCF entered into loan agreements with connected borrowers.

ii. Mr Sedgwick knew by at least 20 January 2016 that L&TD had already borrowed from LCF without having any facility agreement in place and knew that the facility agreement later put in place was backdated in order to conceal this fact.

iii. Mr Sedgwick knew that new sums loaned from LCF in connection with the Prime SPA would not be loaned to Prime RDL but would be diverted to London Group LLP or GAD (which was controlled by Mr Sedgwick).

iv. Mr Sedgwick knew that LCF had loaned funds to LOG without a facility agreement in place and that the facility agreement later put in place was backdated in order to conceal this fact.

1900. Fourth, I find that Mr Sedgwick knew that LCF's representations about there being an independent security trustee were false. As explained above, Mr Sedgwick owned and controlled GST. Mr Sedgwick had set it up. Mr Sedgwick knew that GST was not independent of LCF's borrowers: (i) Mr Sedgwick knew that he was the solicitor instructed to act on behalf of many of LCF's connected borrowers, i.e. companies in the London Group; and (ii) Mr Sedgwick was also the company secretary of many connected borrowers. Mr Sedgwick was clearly not independent of the borrowers.

1901. Fifth, I find that Mr Sedgwick knew that LCF's representations about it being a genuine, legitimate, business and a safe investment were false. This allegation is conveniently addressed by reference to the allegations that there was FCOB by reason of the operation of the Ponzi scheme and the misappropriation of assets: see [1903] to [1905] and [1906] below, respectively. For the reasons given there, I have concluded that those allegations are established in part. For these additional reasons, Mr Sedgwick knew or had a targeted

suspicion that LCF was not a legitimate, sustainable business and was therefore being misrepresented to investors in this respect too. I find that he took a deliberate decision not to ask further questions because he did not want to confirm what he already suspected in these respects.

1902. Sixth, I find that Mr Sedgwick knew that LCF's representations about the value of its security were false. For the detailed reasons given above:

i. Mr Sedgwick knew that The Hill was worthless as security for any lending by LCF, because (i) the interest in The Hill was held on trust for El Cupey for the benefit of the Sanctuary investors, and (ii) the liabilities of the Sanctuary investors were c. £23.5 million. As explained above, Mr Sedgwick had been closely involved in these matters.

ii. Mr Sedgwick also knew about the terms of the Paradise Beach contract because of his extensive involvement in acting on behalf of CV Resorts both in arranging the deal and in dealing with disputes about default on the contract. He knew that the price was too high, such that the contract was not a valuable asset and knew that CV Resorts never acquired any property at Paradise Beach.

iii. Mr Sedgwick knew about the price by which Lakeview was acquired by LCCL as a result of his role in preparing and documenting the transaction on behalf of Mr Hume-Kendall. Mr Sedgwick knew that LCCL did not have any funds of its own in early 2013 and required finance to complete the acquisition. Mr Sedgwick therefore knew that LCCL was involved in dealing with the Telos investors and knew about their position. As a result of Mr Sedgwick's knowledge, and position in relation to LCCL, he was aware of the true value of the Lakeview site, which he knew was considerably less than the liabilities for which it was to stand as security.

iv. Mr Sedgwick knew that the security purportedly provided to secure L&TD's borrowing from LCF was worthless and that L&TD's liabilities to LCF were effectively unsecured.

v. Mr Sedgwick knew that the security granted by the "support" companies was worthless.

vi. Mr Sedgwick knew that there was no adequate security for the liability owed by Atlantic Petroleum Support. He knew that there had been no effective assignment of LOG's rights in relation to Atlantic Petroleum to be used as security for LCF's lending.

1903. I turn to the allegation that Mr Sedgwick was aware that LCF was operated as a Ponzi scheme.

1904. I find the following (supported by the detailed findings above):

i. Mr Sedgwick knew that LCF was being used as a fund-raising vehicle for entities connected with Mr Golding and Mr Hume-Kendall. He knew that it had made the misrepresentations to the public referred to in [1897] to [1902] above.

ii. By virtue of his involvement in the SPA transactions, Mr Sedgwick was aware that very significant amounts (running into tens of millions of pounds) were paid out to the individual Defendants themselves – and these amounts were therefore no longer available to the borrowing companies to generate sufficient funds to repay LCF.

iii. He knew about the arrangement with Surge for payment of commission of 25% of gross receipts.

iv. As the solicitor for the borrowing companies, he was aware of the nature of their business. They were either essentially land banks or held investments in speculative assets. As he knew, none of the borrowing companies had made or was about to make any significant income from its own activities.

v. He knew (including from his involvement in the SAFE bonds) that bondholders were due to be paid interest and redemptions.

vi. Since he knew that none of the borrowing companies were generating income from their own resources, he knew that liabilities to existing bondholders were being paid by LCF from receipts from new investors.

vii. He also knew that any payments by the borrowing companies to LCF (by way of interest liabilities on the loans) were funded by recycling funds paid to the borrowers by LCF, derived from such receipts from new investors.

viii. Mr Sedgwick owned and controlled GAD. As explained above, this company was involved in the process whereby sums were round-tripped from new investors to LCF to borrowers and back to LCF to pay old investors. Mr Sedgwick arranged for some of the sums received by GAD from LCF to be paid back to LCF to enable it to make payments to bondholders, and Mr Sedgwick had actual knowledge from at least May 2018 that he was participating in the recycling of sums through GAD. Mr Sedgwick also actually knew that LCF was recycling sums through LOG from at least July 2018 onwards. There is nothing to suggest that Mr Sedgwick was surprised that this was happening or that he protested against it.

1905. On the basis of these findings, I conclude that at all material times, Mr Sedgwick had (at least) a targeted suspicion that LCF was operating as a Ponzi scheme. He did not make any inquiries to satisfy himself that it was not. I find that this was deliberate as Mr Sedgwick did not want to confirm what he suspected.

1906. I turn to the allegation that Mr Sedgwick knew that LCF's assets were being misappropriated. I have already found that Mr Sedgwick knew about the use of the five SPA transactions by which very substantial parts of the sums invested by bondholders were channelled from LCF to Mr Thomson, Mr Hume-Kendall, Mr Barker, and Mr Golding (and others). I have explained in detail that Mr Sedgwick knowingly participated in each of the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA, and the LPT SPA. I have found that Mr Sedgwick knew that these were uncommercial, artificial transactions which served to conceal the improper payment of LCF's assets to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding in agreed ratios. I have set out in detail above the basis on which I have found that Mr Sedgwick had actual knowledge of the means by which each of these transactions was fraudulent and was designed to conceal the misappropriation of LCF's assets. Mr Sedgwick knew that these activities

were wrong, and he was prepared to create dishonest and misleading documentation in order to conceal the reality of what was going on.

1907. As already explained, Mr Sedgwick also participated in the FCOB of LCF by receiving sums via LOG. These sums were ultimately generated by LCF misrepresenting its position to bondholders. As just explained, I have concluded that Mr Sedgwick had knowledge of these misrepresentations. He therefore knew of this form of fraudulent trading too.

1908. Mr Sedgwick is therefore liable for fraudulent trading. Quantum is addressed below.

Claims for breach of directors' duties

Duties relied on by the Claimants

1909. By closings, the Claimants relied primarily on the following duties:

i. Section 171 of the Companies Act 2006: a director of a company must (a) act in accordance with the company's constitution and (b) only exercise powers for the purposes for which they are conferred.

ii. Section 172: a director must act in the way that he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, having regard to various specified matters, (including the desirability of the company maintaining a reputation for high standards of business conduct). By subsection (3), the duty imposed by the section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider the interests of creditors of the company.

iii. Section 177: if a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.

iv. Section 174: a director of a company must exercise reasonable care, skill and diligence.

1910. Some further points may be noted about some of these provisions.

1911. As to section 172, it was common ground that:

i. The test is subjective and is whether a director exercised his discretion bona fide in what he considered to be the company's best interests: *Re Smith & Fawcett Ltd* [1942] 1 Ch 304 at p. 306.

ii. However, an irrational decision, even if made in good faith, may constitute a breach of this duty: *Hutton v West Cork Railway Co* (1883) LR 23 ChD 654 at p. 671.

iii. Where there is no evidence of actual consideration of the company's interests by the director the test is objective, i.e., whether an intelligent and honest man in the position of a director of the company concerned could, in the circumstances, have reasonably believed that the transaction was for the benefit of the company: *Re*

Charterbridge Corp Ltd v Lloyds Bank Ltd [1970] Ch 62 at 74; *Re HLC Environmental Projects Ltd* [2014] BCC 337 at [92].

iv. Where a company is insolvent or bordering on insolvency, by section 172(3) the directors become obliged to have regard to the interests of creditors. Where a company is irretrievably insolvent, the interests of the creditors should become a paramount consideration in the directors' decision-making: *BTI 2014 LLC v Sequana SA* [2022] UKSC 25 at [176] and [247].

1912. As to section 177, it was common ground that the duty requires a director to make a full and frank disclosure of the precise nature of his interest to the board so that the board may consider the matter as a body.

The pleadings

1913. In written opening submissions for the trial, counsel then acting for Mr Thomson (including leading counsel), stated at [125] that it was denied that he had breached his duties to LCF but that "it is accepted that if the court finds against [Mr Thomson] on the claim in Fraudulent Trading (i.e. that he knew of and participated in lending for the purpose of defrauding bondholders), then it would follow that he has also acted in breach of his duty to LCF". Mr Thomson's then counsel withdrew on the first day of the trial owing to funding issues. After that he was represented by Ms Dwarka-Gungabissoon.

1914. In closing submissions, counsel for Mr Thomson sought to withdraw from the concession made in the written opening. She submitted that the case of breach of duty should be struck out as the pleading was inadequate. She argued that the Particulars of Claim (including in its amended iterations) failed properly to plead the specific duties now sought to be relied upon or properly to tie this to allegations of breach and loss.

1915. I am unable to accept this submission for a number of reasons:

i. The RRRAPOC refers to the various statutory duties now asserted. It alleges that Mr Thomson breached those duties by referring back to facts pleaded for the fraudulent trading claims. It alleges that as a result of those breaches LCF has suffered loss.

ii. Mr Thomson pleaded to these allegations in his Defence at paragraph 68.

iii. The list of issues for trial includes: the duties owed by Mr Thomson to LCF; whether Mr Thomson breached them; and whether LCF suffered any loss as a result.

iv. Hence the parties prepared for trial with these issues in mind.

v. Before the commencement of the trial, I directed that the Claimants should set out the legal principles on which they rely, and the Defendants should indicate any points of disagreement. The Claimants served a document setting out the statutory duties they relied on, and the principles of law set out above. The Defendants did not take issue with that part of the document.

vi. As noted, counsel then acting for Mr Thomson accepted that if the case of fraudulent trading is established, he would also have been in breach of duty.

vii. The trial proceeded on that basis.

viii. To the extent that the complaint is one about particularity, it has been open to Mr Thomson to seek further details from the Claimants. He has not done so.

ix. I consider that the pleadings have informed Mr Thomson and his legal team of the case of breach of duty, and Mr Thomson has had no difficulty understanding it or preparing for trial.

x. I do not, therefore, need to address the question of whether Mr Thomson should be allowed to withdraw from the admission made by his then counsel in his written opening submissions.

1916. Mr Thomson submitted more specifically that the Claimants had not pleaded the factual basis for the application of section 172(3).

1917. The Claimants contended that they had pleaded sufficient facts to engage the duty. They referred to paragraph 22 of the RRRAPOC, which alleges that as a Ponzi scheme, LCF was an inherently unstable and unsustainable model that was inevitably going to collapse at the point at which it could not raise sufficient funds from new bondholders. They also pleaded at paragraph 34(7) that Mr Thomson knew that the LCF Connected Borrowers were incapable of repaying their debts and that LCF would inevitably become unable to meet its obligations to bondholders.

1918. I prefer the submissions of Mr Thomson on this point. The pleadings do not allege that at any given date LCF was insolvent or bordering on insolvency. The paragraphs identified above are consistent with the probability or even inevitability of insolvency at some unspecified date in the future (when new investors ceased to invest). The purpose of pleadings is to identify the issues for trial and allow the parties to identify the evidence they wish to deploy. Where a company's insolvency is pleaded as an issue, this may include expert evidence. Here, the pleadings do not sufficiently clearly give notice of an issue of insolvency. Indeed, it is telling that the list of issues does not identify the insolvency of LCF as an issue.

1919. For these reasons, I have decided that the pleaded case does not raise the duty under section 172(3).

Was Mr Golding a shadow or de facto director of LCF?

1920. The Claimants allege that Mr Golding was a shadow and/or de facto director of LCF.

1921. A shadow director is defined at section 251(1) of the 2006 Act as "a person in accordance with whose directions or instructions the directors of the company are accustomed to act."

1922. Determining whether a person is a shadow director is a matter of fact and degree: *Smithton Ltd v Naggar* [2015] EWCA Civ 939 at [45].

1923. The purpose of the legislation is to identify those, other than professional advisers, with real influence in the affairs of the company; however, it is not necessary that such influence should be extended over the whole field of its corporate activities: *Secretary of State for Trade v Deverell* [2001] Ch 340 at [35], and *Smithton* at [32]. It is not necessary to show that the actual directors have a subservient role or have surrendered their discretion: *Deverell* at [35].

1924. By section 170(5) of the 2006 Act, the general duties owed by a director to the company "apply to a shadow director to the extent they are capable of so applying". The extent of the duties owed by a person in the position of a shadow director will reflect the extent and nature of the instructions given by the shadow director.

1925. A de facto director is a person who assumes to act as a director and who is part of the corporate governing structure of the company but is never formally appointed as a director: see *Smithton* at [61]. Whether a person is a de facto director depends on a global assessment of all the circumstances: *Smithton* at [40]-[45]. The question is whether he was part of the corporate governance system of the company and whether he assumed the status and function of a director so as to make himself responsible as if he were a director: *Smithton* at [33].

1926. A person may be both a shadow and a de facto director at the same time: see *Smithton* at [32].

1927. Turning to the facts, as already explained, Mr Golding was disqualified as a director. He was thereafter involved in businesses through proxies. He used both Mr Thomson and Mr Barker to hold his shares in various companies on trust for him and run those companies for him. For instance, Mr Thomson held Mr Golding's shares in LCCL on trust for him, and Mr Barker often appears twice in documents recording share allocations: once in his own right and once in his role as Mr Golding's proxy.

1928. Mr Golding was the sole beneficial owner of LCF until the Golding-SHK Agreement, which transferred the beneficial ownership in the shares to Mr Thomson. In the period before that agreement, I find that Mr Thomson acted on the instructions of Mr Golding. This is shown by the fact that sums drawn from LCF by Sanctuary PCC were paid to Mr Hume-Kendall (both in his own right and via Mrs Hume-Kendall) and Mr Golding himself. I infer that Mr Thomson made these payments on the instruction of Mr Golding.

1929. By the Golding-SHK Agreement, Mr Golding agreed to transfer the beneficial ownership in the LCF shares to Mr Thomson. No consideration was provided for this transfer of shares. The terms of the agreement show that LCF would continue to act as the capital raising arm of the London Group, which continued to be owned and controlled by Mr Golding and Mr Hume-Kendall.

1930. Detailed findings about Mr Golding's continuing influence in relation to LCF after the date of the Golding-SHK Agreement are made in [318] to [349] above. As described in those paragraphs, Mr Golding remained in control of LCF, and he retained oversight of all aspects of LCF's business. Mr Golding was kept informed about LCF's information memoranda and marketing materials, which ultimately had to be approved by him; and deciding on LCF's logo. He was also kept informed, including by Mr Thomson, of sums being invested into LCF. He was ultimately required to approve communications by LCF

with its investors. Mr Golding made decisions about the products offered by LCF, without prior reference to Mr Thomson. He also made operational decisions concerning LCF, such as moving the responsibility for dealing with ISA bonds to Surge.

1931. Mr Golding received the largest share of sums derived from LCF. He was paid sums in relation to the Sanctuary scheme, the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA and the LPT SPA. He also received 4% of Surge's commission for a significant period. Mr Golding received other substantial amounts from LCF, including funds to buy a helicopter and a substantial "loan", which was then novated to a company so that he was no longer personally liable. I have found above in each case that he directed the release of these sums from LCF. In some instances, where relevant documents have been disclosed, Mr Golding can be seen directing Mr Barker to submit drawdown requests to match LCF's available funds. These facts further support the inference that he was the ultimate controller of LCF.

1932. Mr Golding's status in relation to LCF is also evidenced by LCF's relationship with Surge. Mr Golding agreed terms with Surge without the involvement of Mr Thomson and, indeed, before Mr Thomson had met Mr Careless. Mr Golding was also involved, with Mr Hume-Kendall, but not Mr Thomson, in negotiations with Mr Careless about an exclusivity agreement between LCF and Surge. Surge often resorted to him to override Mr Thomson's decisions and to make things happen when Mr Thomson was failing to act. It was also Mr Golding who ultimately decided the level of Surge's commission.

1933. The relative status of Mr Thomson and Mr Golding in relation to LCF is also evidenced by the fact that once Mr Golding decided he wanted to be paid a portion of Surge's commission, this was in a higher amount than the payments made by Surge to Mr Thomson, which ceased at once. Mr Golding again called the shots.

1934. Mr Golding's continuing role within LCF is also revealed by the Isle of Wight deal. Mr Golding decided the price at which the property would be purchased by a borrower of LCF and how the profit would be allocated. The funds were to be provided by LCF. The terms of the deal were discussed between Mr Golding, Mr Careless and Mr Russell-Murphy. I find that, had the Isle of Wight deal gone ahead, Mr Thomson would have released funds to Prime RDL at the direction of Mr Golding.

1935. As found above, LCF did have other board members in the relevant period. These included Mr Huisamen and Ms Simpson. However, I find that neither of them appears to have had any control over decisions about whether to make loans to borrowers, or about the distribution of LCF's assets. These functions were carried out by Mr Thomson. I find that the other directors went along with him on these matters, so that Mr Thomson's acts in relation to them are to be treated as those of the directors as a whole.

1936. On the basis of these factual findings, I conclude that Mr Golding had ultimate control over the affairs of LCF. Mr Thomson was accustomed to act in accordance with his instructions or directions. Mr Golding was therefore a shadow director of LCF for the entire material period.

1937. I also find that on some occasions Mr Golding assumed the functions and role of a director of LCF. He dealt with Surge as if he had authority to make commercial decisions. However, he did not generally purport to act as part of the governance systems of LCF

and was not held out as a director of LCF. Given my conclusions that Mr Golding was a shadow director for the entire material period, it is unnecessary to seek to determine the respects or periods in which he acted as a de facto director.

1938. Mr Golding therefore owed duties to LCF under sections 171, 172, 174 and 177 of the Companies Act 2006.

Did Mr Thomson breach his duties?

1939. I have made detailed findings that LCF's business was conducted fraudulently. In summary, LCF raised money from bondholders by mispresenting the nature of its business and wrongly distributed a large part of that money to the four individual Defendants. There was no realistic prospect of the borrowers repaying their debts or generating income capable of doing so within any realistic period. LCF's lending was very seriously under-secured. There was no material due diligence into the borrowers. There was no material monitoring of the borrower's business prospects. Mr Thomson knew that tens of millions of pounds were paid by the borrowing groups to the four individuals, who were (in his words) "cashing out". Though he said in evidence that he was appalled to discover that this had happened, I have found that he knew it was happening at the time. That money was therefore not available to the borrowers to generate returns.

1940. Mr Thomson also knew that 25% of all funds raised were going to Surge and were therefore leaving the business operations of LCF or the borrowers upfront. He therefore knew that the business of LCF was unsustainable and that liabilities to existing bondholders could only be met from newly invested funds. He knew that LCF was operating as a Ponzi scheme. He also knew of the secret commissions paid to him and Mr Golding by Surge. I have also described in detail how loans were made or increased without proper loan or security documentation.

1941. Mr Thomson was involved in all these aspects of LCF's business. He was responsible for its marketing materials, for the approval of loans to borrowers, for the round-tripping of money from new investors to pay (ultimately) the existing investors. He was responsible for approving drawdowns, knowing that the proceeds were going to himself and the other three individuals.

1942. This conduct, described in detail above, constituted a breach of Mr Thomson's duties under section 171 of the 2006 Act. Mr Thomson exercised his powers as a director for the improper purpose of raising money through false representations; by authorising the loan transactions between LCF and the various connected borrowers; and by causing the misappropriation of LCF's funds to make payments to himself and the other individual Defendants. It was, moreover, a breach of duty for Mr Thomson to cause LCF to apply money raised from new investors to pay its obligations to existing ones (via the round-tripping arrangements). That was unlawful and was an exercise of the company's powers for an improper purpose. Mr Thomson also breached his duty by requiring Surge to pay him a secret commission.

1943. Mr Thomson was also in breach of his duties under section 172. First, as described in detail above, Mr Thomson conducted the business of LCF dishonestly. He could not therefore have been bona fide seeking to promote its business.

1944. Second, there was no evidence that Mr Thomson considered the interests of LCF at all. Together with other Defendants, he was concerned with enriching himself and he had no regard to the success of LCF's business. It follows that the objective test applies. No honest and reasonable director in the position of Mr Thomson could have considered that the conduct, and events set out in great detail earlier in this judgment and summarised in the previous paragraph above, would promote the success of LCF. On the contrary, that conduct was always likely to lead ultimately to the insolvent collapse of LCF and losses to the investors.

1945. Specifically, Mr Thomson breached his section 172 duties under this second head by:

i. Knowingly raising money from bondholders through the use of false representations; Mr Thomson caused LCF to commit unlawful acts giving rise to the prospect of liability for wrongdoing.

ii. Paying 25% (or 22.5% in the case of 5-year bonds) of the gross sums raised to Surge. That level of fees was, for reasons given above, uncommercial and unsustainable. The arrangement was entered into because those running LCF, including Mr Thomson, wanted to maximise gross receipts as rapidly as possible, but without caring about the overall success of its business: maximising revenue is different from promoting the success of the business. I have held that the business of LCF was based on making false representations to bondholders in order to raise funds for Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding and their businesses. This was already the case before Surge was appointed as marketing agent and it carried on throughout the period of Surge's involvement. An honest director acting reasonably would not have caused LCF to carry on business in this dishonest way and would not have engaged Surge to sell its products. An honest director acting reasonably would not have been prepared to pay such a large proportion of the company's receipts to a marketing agent. Nor would such a director have caused the company to make payments which made its business model unsustainable.

iii. Requiring Surge to pay him 0.5% of gross sums raised, in return for maintaining Surge's fees at 25%.

iv. Making promises to bondholders in order to maximise the sums raised by LCF and without any thought or concern as to how LCF would generate sufficient sums to pay interest at these rates.

v. Authorising the misapplication of LCF's money to himself, Mr Hume-Kendall, Mr Barker, Mr Golding, Surge, Mr Sedgwick, Mrs Hume-Kendall and others as described above, so that LCF would not be able to repay its creditors.

vi. Seeking to conceal the fraudulent scheme, including from LCF's and LOG's auditors and GCEN, by the use of dishonestly backdated documents.

vii. Authorising or permitting LCF to lend money against security he knew to be of seriously inadequate value.

viii. Authorising or permitting the use of sums from new bondholders to pay LCF's obligations to existing bondholders.

1946. In the light of these findings, it is unnecessary to consider the further alleged breaches of fiduciary duty.

1947. Finally, by raising money from bondholders through false information; paying Surge an unsustainably high fee; promising unsustainably high interest rates to bondholders; failing to carry out due diligence on LCF's borrowers to ensure they could repay the borrowed sums; failing to ensure that the realisable value of the security granted by borrowers was adequate; and paying out LCF's assets to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding among others, Mr Thomson acted in a way that no reasonable director in his position would act and therefore breached the duty he owed LCF under section 174 of the 2006 Act. The Claimants are entitled to damages for the loss caused to LCF by Mr Thomson's breaches of this duty.

1948. Remedies and quantum are addressed below.

Did Mr Golding breach his duties?

1949. Detailed findings are made above about Mr Golding's involvement in LCF and the various transactions. They are the basis of the conclusions in this section.

1950. I find for the foregoing reasons that Mr Golding breached the duties he owed LCF under section 171 of the Companies Act 2006 as follows:

i. Directing or authorising LCF to raise sums from bondholders through the use of false representations.

ii. Authorising or directing the misapplication of LCF's money to himself, Mr Thomson, Mr Hume-Kendall, Mr Barker, Surge, Mr Sedgwick, Mrs Hume-Kendall and others as described above.

iii. Authorising or directing the use of sums from new bondholders to pay LCF's obligations to existing bondholders, thereby concealing the fraudulent scheme LCF was being used to effect.

iv. Requiring Surge to pay him 1% of gross sums raised from new bondholders (for maintaining the level of Surge's commission).

1951. I find that Mr Golding breached the duties he owed to LCF under section 172. First, he acted in bad faith throughout and therefore failed in good faith to promote the interests of LCF.

1952. Second, there was no evidence that Mr Golding actually considered the interests of LCF at all. Together with other Defendants, he was concerned with enriching himself and he had no regard to the success of LCF's business. No honest and reasonable director in the position of Mr Golding could have considered that conduct and events set out in great detail earlier in this judgment and summarised in the previous paragraph above would promote the success of LCF. On the contrary, that conduct was calculated to lead ultimately to the insolvent collapse of LCF and losses to the investors.

1953. I find specifically that Mr Golding breached his section 172 duties under this second head by:

   i. Knowingly raising sums from bondholders through the use of false representations; Mr Golding thereby caused LCF to commit unlawful acts giving rise to the prospect of liability for wrongdoing.

   ii. Causing LCF to agree to pay and paying 25% of the gross sums raised to Surge. That level of fees was, for reasons given above, uncommercial and unsustainable. The arrangement was entered because those running LCF, including Mr Golding, wanted to maximise the gross receipts as rapidly as possible, and without regard to promoting the success of its business: maximising revenue is not promoting the success of the business.

   iii. Requiring Surge to pay him 1% of gross sums raised, in return for maintaining Surge's fees at 25%.

   iv. Making promises to bondholders in order to maximise the sums raised by LCF and without any thought or concern as to how LCF would generate sufficient sums to pay interest at these rates.

   v. Authorising the misapplication of LCF's money to himself, Mr Thomson Mr Hume-Kendall, Mr Barker, Surge, Mr Sedgwick, Mrs Hume-Kendall and others as described in detail above, so that LCF would not be able to repay its creditors.

   vi. Authorising or permitting LCF to lend money against security he knew to be of seriously inadequate value.

   vii. Authorising or permitting the use of sums from new bondholders to pay LCF's obligations to existing bondholders.

1954. In light of these findings, it is unnecessary to consider the other alleged breaches of fiduciary duty or duty of care. I heard no submissions about the extent to which Mr Golding as a shadow director may be liable for breach of his duty of care.

1955. Remedies are addressed below.

Alternative case of breach of duty by Mr Hume-Kendall and Mr Barker

1956. The Claimants advanced an alternative case that Mr Hume-Kendall and Mr Barker breached their duties as directors of LOG. Proprietary and other claims are brought against Mr Thomson, Mr Golding and Mr Sedgwick based on these alleged breaches of duty. I heard little by way of submission on this part of the case, in large part because the Claimants have settled with Mr Hume-Kendall and Mr Barker. In the light of my findings it is unnecessary to address this alternative claim further.

Equitable proprietary claims

1957. The Claimants bring proprietary claims against Mr Thomson, Mr Golding, the Surge Defendants, Mr Russell-Murphy, Mr Sedgwick and GP. The Claimants say that they received assets from LCF otherwise than as bona fide purchasers for value without notice.

Legal principles

1958. In *Byers v Saudi National Bank* [2023] UKSC 51, the Supreme Court restated a number of propositions:

i. The transfer of trust property by a trustee to a bona fide purchaser for value of the legal estate without notice (for convenience, "a BFP") extinguishes or overrides the proprietary equitable interest of the cestui que trust (the trust beneficiary) and this is so even if the trustee in so doing acts in breach of trust: [2], [18]-[20] and [156].

ii. If a BFP later becomes aware that the property was transferred in breach of trust, this does not resuscitate the claimant's proprietary equitable interest. That interest also is not revived when the original purchaser transfers the property to a further transferee, who, at the time of the transfer, is aware that there has been a breach of trust. On the other hand, if the subsequent transferee were the defaulting trustee, he or she would not be released from the trust obligations but would hold the asset for the beneficiary: see [3], [23]-[24] and [167]-[171].

iii. A claim in knowing receipt cannot succeed in these circumstances because the claimant's proprietary interest has been extinguished or overridden: see [4], [23]-[24], [172] and [201].

1959. Lord Briggs explained, at [60] to [61], that in the case of a company there is no pre-existing trust or separation of legal title from beneficial interest for as long as legal title remains vested in the company. However, a trust, with a concomitant splitting of legal title from the company's continuing beneficial interest in the misapplied property occurs at the moment of the transfer which constituted the misapplication. Legal title passes to the transferee, but the equitable beneficial interest remains with the company. Therefore, the company retains the equitable interest sufficient to support a proprietary claim to the property or its traceable proceeds, and a knowing receipt personal claim against any recipient who had received the property with notice of the misapplication, subject to any overriding of its equitable interest in the meantime. This is a real trust and not just a breach of fiduciary duty treated like a breach of trust by way of analogy. The company's claim would be defeated by a recipient with a better title including a BFP.

1960. Lord Burrows addressed the same issue at [177]-[188]. He accepted the submission that, for the limited purposes of equitable relief, the director (or other fiduciary) should be regarded, at the point of committing the breach of fiduciary duty in relation to the assets, as a constructive trustee of the assets; so that, immediately before the receipt by the defendant, the claimant would have an equitable proprietary interest, but one that existed under a constructive, rather than an express, trust.

1961. Counsel for the Surge Defendants and Mr Thomson submitted that where a recipient has received property under a contract which is alleged to have been procured by a director in breach of his duty to the company, the existence of the contract, unless and until set

aside or alleged and shown to be void, justifies the receipt. This is because it prevents the company having a continuing proprietary interest at the point of receipt.

1962. The Surge Defendants relied on the speech of Lord Nicholls in *Criterion Properties plc v Stratford UK Properties LLC* [2004] UKHL 28, [2004] 1 WLR 1846. The issue in that case was whether a "poison pill" agreement entered by Criterion's directors in breach of fiduciary duty was enforceable. At first instance, and in the Court of Appeal, the issue had been analysed by applying the principles for knowing receipt, with the courts considering whether it was unconscionable for the counterparty to the "poison pill" agreement to hold Criterion to it. The House of Lords disagreed and considered that the correct approach was to consider whether Criterion's directors had actual or apparent authority to execute the agreement. The case was not concerned with the status of company property misapplied by a company director and then paid over to him by an intermediate recipient: see Lord Scott (giving the majority speech) at [27].

1963. Lord Nicholls gave a concurring speech (with which Lord Walker agreed). At [3] to [5] he said,

> "3. Unfortunately, in the courts below this "want of authority" issue was approached on the basis that the outcome turned on whether Oaktree's conduct was unconscionable. This seems to have been the test applied by the Court of Appeal in *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437 both to questions of 'want of authority' and to liability for what traditionally has been labelled "knowing receipt".
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> 4. I respectfully consider the Court of Appeal in *Akindele's* case fell into error on this point. If a company (A) enters into an agreement with B under which B acquires benefits from A, A's ability to recover these benefits from B depends essentially on whether the agreement is binding on A. If the directors of A were acting for an improper purpose when they entered into the agreement, A's ability to have the agreement set aside depends upon the application of familiar principles of agency and company law. If, applying these principles, the agreement is found to be valid and is therefore not set aside, questions of "knowing receipt" by B do not arise. So far as B is concerned there can be no question of A's assets having been misapplied. B acquired the assets from A, the legal and beneficial owner of the assets, under a valid agreement made between him and A. If, however, the agreement is set aside, B will be accountable for any benefits he may have received from A under the agreement. A will have a proprietary claim, if B still has the assets. Additionally, and irrespective of whether B still has the assets in question, A will have a personal claim against B for unjust enrichment, subject always to a defence of change of position. B's personal accountability will not be dependent upon proof of fault or "unconscionable" conduct on his part. B's accountability, in this regard, will be "strict".

> 5. Either way, therefore, whether the ... agreement is set aside or not, questions of unconscionability do not arise on Criterion's application for summary judgment."

1964. This passage was obiter, since the unanimous view was that the case was concerned with the enforceability of an executory contract under which no benefits had passed. It has attracted criticism. In *Thanakharn v Akai Holdings Ltd* [2010] HKCFA 64, at [128], Lord Neuberger, sitting in the Hong Kong Court of Final Appeal, described Lord Nicholls' criticism of *Akindele* as an uncharacteristically obscure remark.

1965. It is certainly not an easy passage to interpret. Lord Nicholls would seem to be suggesting that where a company enters a contract, there can be no claim in knowing receipt based on the cases culminating in *Akindele*. He seems to say that if the contract is held to be valid, that will defeat a claim to recover any property passing under it; whereas if it is held to be invalid, the claimant will be restricted to recovery of the property in specie or a claim in unjust enrichment. He also seems to say that the questions are simply those of contract and company law and that the principles in *Akindele* (about the state of mind of the recipient) are irrelevant.

1966. Lord Nicholls has been interpreted in two later cases as saying that where benefits pass under a contract made by the claimant, unless the contract is set aside there can be no knowing receipt claim.

1967. The first is *Madoff Securities International Ltd v Raven* [2013] EWHC 3147 (Comm). At [368] Popplewell J said "[w]here the claimant is a company, and the claim is in respect of sums paid out by the company under a contract, then unless that contract is set aside as being invalid, the recipient may rely upon the contract to justify the receipt. In such circumstances, no question of knowing receipt arises" (citing *Criterion* at [4]). I note that Popplewell J also held that there had been no breach of fiduciary duty by the directors.

1968. The second is *Tuke v Hood* [2020] EWHC 2843 (Comm), a decision of Jacobs J, who followed Popplewell J's formulation in *Madoff*.

1969. I am unable to accept the submission that *Criterion* establishes that a claimant company may not bring a constructive trust claim (or indeed an equitable proprietary claim) in respect of benefits paid under a contract unless and until it has succeeded in setting aside the contract as being invalid (or even that it has applied to do so). There are several reasons for this conclusion.

1970. First, as shown by *Byers*, where a director transfers company property in breach of fiduciary duty, a trust arises under which the company is the beneficiary and retains an equitable interest in the property. This arises at or immediately before the transfer. The title of the recipient depends on the general rules set out in *Byers*. A BFP will take full beneficial title. A recipient who is not a BFP (e.g. a volunteer or a recipient with notice) will take subject to the company's claim. A recipient of the latter kind who then parts with the property will potentially be a constructive trustee depending on the state of its knowledge.

1971. Second, the suggestion that the existence of a contract which has not yet been set aside is enough to defeat such claims is inconsistent with many cases concerning putative BFPs. It will almost always be the case that a person claiming to be a BFP will rely on a

contact (that is the core idea of being a "purchaser"). But being a BFP depends on the defendant establishing more than just an extant contract; it requires, inter alia, a lack of notice of impropriety by the directors. Indeed, in many of the cases, the court has not even asked whether the contract is valid, and it has been accepted by the claimant that legal title has passed. The question is whether the equitable property of the claimant persists.

1972. The Surge Defendants' submission would involve replacing the various elements of demonstrating that the defendant is a BFP with the much simpler one of showing that the benefits were received under a contact with the claimant which has not been set aside. That proposition would be at odds with *Akindele* (which is binding on this court), and the principles restated in *Byers*.

1973. Third, it is well-established that the burden of pleading and establishing the defence of BFP is on the recipient. To ground its equitable proprietary claim, the claimant company must show a misapplication of assets in breach of fiduciary duty and receipt by the defendant; it is then for the defendant to establish its status as a BFP. I am unable to accept the submission of the Surge Defendants that the claimant also must apply to set aside any contract under which the property passed.

1974. Of course, the existence and validity of any such contract may well be in play once the defence of BFP is raised. The defendant will probably assert a contract (as well as the elements of the BFP defence). It may be that the claimant contends that the contract is void because entering it was itself a breach of fiduciary duty. But the burden is on the defendant to raise the contract; it is not for the claimant to seek to set it aside as a pre-condition for claiming the equitable title.

1975. Fourth, there may be cases where benefits are paid under a contract which is not itself capable of being set aside or declared void as a matter of contract law or company law, but where the continued performance of the contract constitutes a breach of fiduciary duty by the directors of the company. As a matter of contract law, the company may not be able to establish that contract is void or that there are grounds to set it aside. But it is hard to see why this should defeat proprietary claims by the company to recover the property passed under the contract in breach of the directors' duties to the company. The complaints in such a case arise from the continued performance of the contract, not its existence or validity. Therefore, the claims should not depend on setting aside or avoiding the contract.

1976. Fifth, it is possible that the above passages in *Criterion* and the two cases which have followed it may have arisen from a conflation with the (distinct) kinds of constructive trust claims based on a mere equity (such as the right to set aside a contract for misrepresentation or undue influence). In such cases, the entire property passes unless and until the contract has been set aside, at which point a special form of constructive trust arises (see e.g. *Shalson v Russo* [2003] EWHC 1637 (Ch)). There are some echoes of that requirement in the three passages I have referred to.

1977. Sixth, it is not clear from the report of the *Madoff* case whether the arguments based on the *Criterion* passage were the subject of any contested argument. The result of the case can be explained on the simpler basis that, as the court found, there was no breach of fiduciary duty by the directors. The claimants' case therefore did not even get to first base; since there was no separation of the equitable and legal title (as explained in *Byers*).

1978. Seventh, in *Byers* Lord Burrows addressed *Criterion* at [189] ff. At [196] he concluded that if Lord Nicholls was suggesting that *Akindele* was wrongly reasoned, he was going too far. At [197] of *Byers*, Lord Burrows said that where benefits had passed under a contract which had itself been entered into in breach of fiduciary duty, there may be various remedies, both at common law for unjust enrichment and in equity (proprietary claims and knowing assistance). This is at odds with Lord Nicholls' suggestion that the principles in *Akindele* can have no application where benefits pass under a contract.

1979. In this context, counsel for the Surge Defendants submitted that in this passage of *Byers* (which he accepted was obiter), Lord Burrows intended to restrict such equitable proprietary and knowing assistance claims to cases where the relevant contract under which property had transferred was void (as being entered into in breach of fiduciary duty) (see [192] and [196]). I do not think that Lord Burrows was intending to state such a broad principle for several reasons.

   i. First, paragraph [192] of *Byers* gave some examples, but did not propose an exhaustive list.

   ii. Second, earlier in his judgment, Lord Burrows had set out the general principle that an equitable proprietary claim would arise where there was a disposition of company property in breach of fiduciary duty and that this could be defeated by the defence of BFP. He could not have intended in [196] to suggest a dilution of the requirements of this defence by replacing it with the more easily satisfied defence of "valid contract". Having just set out the principles, including the BFP defence, he could not have intended to replace it with something less demanding.

   iii. Third, in these passages, Lord Burrows was dealing with the relevance, if any, of Lord Nicholls' speech in *Criterion*, which included the suggestion that *Akindele* had no relevance where benefits passed under a contract. Lord Burrows disagreed with that broad suggestion on the basis that there could be knowing receipt claims (as well as common law claims in unjust enrichment and proprietary claims) even where there had been a contract. That was the point he was addressing, and it was sufficient to show that there could be cases where knowing receipt was still relevant.

   iv. Fourth, Lord Burrows was not purporting to deal with the kind of cases described above where the contract itself may be valid, but performance of the contract by the directors was in breach of fiduciary duty and amounted to a misapplication of the company's assets.

   v. Fifth, and in any event, in my view, Lord Burrows was not concerned with the procedural question of which party has the burden of pleading and proving the existence of a contract. I do not read him as departing from the orthodox view that the burden of establishing the BFP defence rests with the defendant.

1980. For these reasons, I do not accept that *Criterion*, *Madoff* or *Tuke* have introduced a requirement that before an equitable proprietary or knowing receipt claim can be brought the claimant company must apply to set aside any contract under which the relevant transfers were made. To the extent that *Madoff* and *Tuke* support the proposition advanced by the Surge Defendants, I consider that they are wrongly decided. In my judgment, the principles are authoritatively set out in *Byers*.

1981. There are further relevant legal principles concerning the claims against Mr Thomson and Mr Golding:

i. A defaulting fiduciary (including a director) is liable to the principal as a constructive trustee for any benefits received in breach of duty. It does not matter how many hands money deriving from the principal may have passed through and questions of value are irrelevant. Indeed, where a defaulting fiduciary has received benefits from a breach of duty, the assets need not even derive from the principal: see *FHR European Ventures LLP v Cedar Capital Partners LLC* [2015] AC 250.

ii. A defaulting fiduciary cannot insulate himself from a proprietary claim by purchasing property from a BFP: *Wilkes v Spooner* [1911] 2 KB 473; and *Byers* (see [1958.iii] above).

1982. As to the element of notice in the defence of BFP, the position was summarised by Foxton J in *Serious Fraud Office v Litigation Capital Ltd* [2021] EWHC 1272 (Comm) at [145]:

> "i) The court must consider whether, on the facts known to the person claiming to be without notice, a reasonable person with the attributes of the relevant person should have appreciated that a proprietary right (not merely a proprietary claim) probably existed. If so, there is constructive notice (which, to distinguish it from the further stages of the enquiry, it is convenient to refer to as "type 1" constructive notice).
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> ii) If there is no type 1 constructive notice, the court should consider whether the facts known to the person claiming to be without notice would have led a reasonable person with the relevant attributes to make enquiries or seek advice which, had they been made or sought, would have revealed the probable existence of such a right. If so, there is also constructive notice ("type 2" constructive notice).
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> iii) The threshold for seeking advice or making enquiries is not merely where a reasonable person would have been aware of a possible right, but nor it is necessary that he would have been aware of a probable right. The state of knowledge which triggers such a duty lies somewhere between the two. Enquiries must be made where there is a serious possibility of a third party having such a right or, to put it another way, if the facts known would give a reasonable person with the relevant attributes serious cause to question the propriety of the transaction."

1983. The requirement of bona fides must be satisfied even where the absence of notice is proved: *Midland Bank Trust v Green* [1981] AC 513, at p. 528.

1984. A defendant cannot rely on the BFP defence unless the consideration or purchase price has already been paid; the consideration must be executed and an unfulfilled promise does not involve the provision of value for this purpose: *see Snell's Equity*, 34th ed., [4-022].

1985. The burden is on the person seeking to establish the BFP defence.

The specific equitable proprietary claims

1986. The Claimants relied at the trial on a number of strands of evidence. First, the evidence of Mr Hudson, who explained that the connected borrowers had no real source of funding other than LCF. I have accepted this evidence. Second, admissions by some of the Defendants that all of their property is derived from LCF (wholly or in part). Third, a tracing exercise conducted by reference to a large quantity of bank statements. Some of these were collected during the course of the trial through third party disclosure orders against banks.

1987. It is convenient to address the claims against the Defendants in turn.

1988. Some of the conclusions reached below turn on questions of notice to be attributed to various companies. I have addressed the states of mind of Mr Thomson, Mr Golding and Mr Sedgwick in detail above. As to Mr Hume-Kendall and Mr Barker, I have described and made findings about inter alia (i) their roles in relation to the SPAs and various connected borrowers; (ii) the sharing arrangements between the first four individual Defendants, including them; (iii) their interests under Golding-SHK Agreement, including their understanding of the function of LCF as a fund-raising vehicle; (iv) their knowledge of the way in which LCF was marketing the bonds to bondholders; (v) the nature of the relationship between Mr Barker and Mr Golding; and (vi) Mr Hume-Kendall's involvement in Sanctuary and SAFE (before it became LCF). The claims against Mr Hume-Kendall and Mr Barker have been compromised, but their state of mind is a relevant element in the analysis which follows. I am satisfied on the basis of the detailed findings I have made about them above, that they were on notice of there being a serious possibility of impropriety in relation to LCF: specifically, that they knew facts giving rise (at least) to the serious possibility that the business of LCF was being conducted fraudulently in the sense that it was raising money from the public by false pretences for the purpose of funding entities associated with Mr Golding and Mr Hume-Kendall; and that payments made out of the funds of LCF therefore involved impropriety. They carried on (personally and as directors of companies) taking advantage of the payments.

1989. In the following sections, I shall address the various payment-chains relied on by the Claimants. I shall not attempt here to set out every step in these chains but have reviewed the evidence and have satisfied myself of the following conclusions on the balance of probabilities.

Equitable proprietary claims against Mr Golding

1990. I have found that Mr Golding was a shadow director of LCF at all material times and owed LCF fiduciary obligations. I have also found that he was a defaulting fiduciary. I find that he is liable to account to LCF as a constructive trustee for all benefits received by him directly or indirectly from LCF. Those benefits are identified below.

1991. Though that is sufficient to establish the claims against Mr Golding, for completeness I also address the Claimants' case that LCF continued to have a subsisting equitable proprietary interest in the assets the hands of intermediate recipients because none of

those intermediate recipients was a bona fide purchaser for value without notice. I shall address these claims below, by reference to the various receipts of Mr Golding.

1992. The Claimants also rely on the principle that a defaulting fiduciary cannot acquire good title to assets paid away in breach of fiduciary duty from an intermediate BFP. I find that that principle also applies here.

1993. I turn to Mr Golding's direct or indirect receipts from LCF.

Payments from FSES to Mr Golding

1994. FSES also known as River Lodge Equestrian Centre UK Limited, paid a total of £791,128 to Mr Golding between 9 January 2018 and 27 July 2018.

1995. The evidence shows that this was funded by a payment from LCF to FSES directly of £904,050 on 14 December 2017, before FSES made the onward payment of £791,128 to Mr Golding.

1996. I find for the following reasons that FSES was on notice that the money had been paid out of LCF in breach of fiduciary duty:

i. Though the sole de jure director and shareholder of FSES was Rafael Ariza-Sanctuary, I find that Mr Golding was the directing mind and will of FSES at all material times: (i) Mr Golding gave instructions to Mr Sedgwick and Mr Darragh O'Dea in connection with FSES's affairs from its incorporation onwards, as appears from emails dated 20 January 2017 onwards into which Mr Golding was copied, and into which Rafael Ariza-Sanctuary was not copied; (ii) Mr Golding gave instructions in connection with FSES's opening of a bank account; (iii) Mr Golding required documents concerning FSES to be executed; (iv) communications between LCF and FSES were addressed to Mr Golding's personal address at Home Farm, Warren Road, Crowborough; (v) Mr Golding was in substance considered to be the owner and controller of the shares: on 11 September 2017, Mr Sedgwick emailed Mr Golding to say that "I note that all the shares in the English company are owned by Rafael I do think that need [sic] to have some form of trust arrangement with Rafael to control the shares"; and when Mr Sedgwick later noted that Mr Ariza-Sanctuary owned the shares in FSES, Mr Sedgwick's reaction was to ask "have you got a trust deed from him?"; (vi) Mr Golding owned (at least) 50% of the shares in FSES, which were held on trust for him by Mr Ariza-Sanctuary, in circumstances where Mr Golding was disqualified from having any direct or indirect role in the management of companies; and (vii) Mr Ariza-Sanctuary himself acknowledged that he was put in place by Mr Golding; and when he was contacted by a journalist in 2019, he made this point to Mr Barker: "I had no idea about LCF and what Spencer got me into I'm starting to think I was used."

ii. FSES did not give value for its receipts from LCF. As to the loan agreement between LCF and FSES signed on or around 9 October 2017: (a) FSES's purely executory promise to repay the loan is not value for these purposes, and (b) in any event, FSES (through Mr Golding (see i. above)) had notice in the relevant sense.

iii. Though the evidence shows that Mr Golding made payments to FSES which (in total) exceeded the amounts paid from FSES to himself, this does not defeat the claim. Where Mr Golding made payments to fund connected companies such as FSES, the Claimants are entitled (absent contrary evidence) to treat those payments as having been from Mr Golding's own money originating from a different source (rather than the money paid to him by LCF).

iv. No basis has been suggested on which Mr Golding gave value for his receipts from FSES.

Payments from GCEN to Mr Golding

1997. GCEN paid a total of £8,796,527.50 to Mr Golding between 22 June 2016 and 27 November 2018.

1998. As already explained, GCEN was LCF's payment agent. Sums held by GCEN were collected by GCEN from bondholders on LCF's behalf and belonged beneficially to LCF. Payments from GCEN to Mr Golding were thus payments from LCF to Mr Golding.

1999. No basis has been suggested on which Mr Golding gave value for his receipts from GCEN. Mr Golding was, in any case, on notice that the payments to him were made by LCF in breach of the directors' duties for reasons detailed above.

Payment from Green Electricity to Mr Golding

2000. Green Electricity was known throughout the period in question as Leisure and Tourism Limited. It received sums from SAFE/LCF to make interest payments to the Sanctuary investors during the relevant period. It changed its name to Green Electricity on 6 May 2022.

2001. Green Electricity paid the sum of £13,023.86 to Mr Golding between 28 June 2018 and 29 November 2018.

2002. I find that Green Energy was funded by LCF in four ways:

i. by One Monday (in the net sum of £623,148.06), ultimately funded by LCF (as SAFE);

ii. by Sands Equity (in the net sum of £91,798.62), ultimately funded by LCF;

iii. by LCF directly (in the net sum of £1,739,155); and

iv. by Prime RDL (in the net sum of £718,386.29), ultimately funded by LCF.

2003. Green Electricity did not trade (and therefore appears to have had no other real source of income other than LCF), as Mr Hudson explains in his evidence. There is no basis for suggesting that Green Electricity gave any value for the sums that it received.

2004. In any event, there is nothing to show that Green Electricity was acting bona fide and/or was not on notice that sums had been paid from LCF (including as SAFE) in breach of fiduciary duty. The bank statements of Green Electricity reveal that considerable payments were made from its accounts to companies connected with Mr Thomson, Mr

Hume-Kendall, Mr Barker and Mr Golding, and its directors (Mr Peacock and Mr Henry Hume-Kendall) each had links to Mr Hume-Kendall. Moreover, as explained above, Green Electricity (under the name Leisure and Tourism Limited) received sums from new SAFE/LCF investors to fund interest payments to existing Sanctuary investors.

2005. Further, no basis has been advanced on which to conclude Mr Golding gave value for his receipts from Green Electricity and, in any event, he has not shown that he was a bona fide purchaser without notice.

Payments from LCCL to Mr Golding

2006. LCCL paid the gross total of £109,454.17 to Mr Golding between 6 March 2014 and 3 June 2016.

2007. In the early period, when sums from SAFE investors were being paid to Buss Murton, Buss Murton transferred sums to One Monday, which transferred sums to LCCL. Later, from about 28 August 2015 onwards, LCF made payments to L&TD, which in turn transferred sums to LCCL. Between 28 August 2015 and 2 December 2016, LCF paid the net sum of £17,674,806.50 to L&TD; and L&TD paid £4,070,674 to LCCL.

2008. I find that: (i) SAFE funded payments to LCCL via One Monday in sufficient sums to be traced into payments to Mr Golding from 6 March 2014 onwards; and (ii) from around 28 August 2015 onwards, LCF paid sums to L&TD, which in turn funded LCCL, in sufficient sums to be traced into subsequent payments to Mr Golding.

2009. I find that LCCL was on notice that sums had been paid deriving from LCF. Specifically: (i) Mr Thomson was a director of LCCL from 18 December 2012 until 27 March 2014, and again from 12 March 2014 until 15 August 2015; (ii) Mr Hume-Kendall was a director of LCCL from 11 June 2013 until 14 March 2017; (iii) Mr Sedgwick was a director of LCCL from 18 December 2012 until 12 March 2018. I am satisfied that they had notice of possible impropriety on the part of LCF.

2010. L&TD was also on notice that the money had been paid out of LCF in breach of fiduciary duty, as explained further below.

2011. No basis has been suggested on which to conclude that Mr Golding gave value for his receipts from LCCL or that he was a bona fide purchaser thereof without notice.

Payments from L&TD to Mr Golding

2012. L&TD paid a total of £8,969,721.50 to Mr Golding between 5 October 2015 and 4 May 2017.

2013. L&TD was in turn funded by sums paid from LCF: (i) up to and including 5 October 2015, LCF paid L&TD a net total of £367,650; and (ii) between 6 October 2015 and 4 May 2017, LCF paid L&TD a net total of £26,464,735.73. This is a combined net total of £26,832,385.73.

2014. Sums paid from LCF to L&TD were also used to fund payments to Mr Golding through other borrowing companies.

2015. I find that L&TD was on notice that the money had been paid out of LCF in breach of fiduciary duty. In this regard: (i) Mr Thomson was a director of L&TD until 12 February 2016, such that L&TD had knowledge of all the facts known to Mr Thomson as at 12 February 2016; (ii) Mr Hume-Kendall was a director of L&TD between 23 January 2015 and 4 May 2018; (iii) Mr Sedgwick was a director and/or company secretary of L&TD until 12 March 2018. Their knowledge is to be attributed to L&TD. I find (as detailed above) that each of them had notice of impropriety in relation to LCF.

2016. L&TD gave no value for the receipt of sums from LCF. L&TD's purely executory promise to repay the loan is not value for these purposes, as explained above.

2017. In any case, I find that L&TD had notice that Mr Thomson was in breach of duty by causing LCF to enter the loan with L&TD and allow drawdowns under it for the reasons detailed above.

2018. Moreover, as part of these amounts L&TD received from LCF a gross total of £4,498,741.27 before 30 March 2016, the earliest date on which the first facility agreement between LCF and L&TD was executed. The facility agreement between LCF and L&TD was backdated to justify earlier payments from LCF to L&TD and which were already subject to LCF's equitable interest, and so could not be relied upon as providing value at the time of receipt by L&TD.

2019. No basis has been suggested on which Mr Golding gave value for his receipts from L&TD; or for the conclusion that he was a bona fide purchaser without notice.

Payments from LCF to Mr Golding

2020. LCF paid a total of £8,342,207.46 to Mr Golding between 27 November 2015 and 4 December 2018. This was paid directly from LCF to bank accounts held by Mr Golding:

i. LCF paid sums to bank accounts in Mr Golding's name in the total sum of £2,293,342.50 between 27 November 2015 and 4 December 2018.

ii. LCF paid sums to bank accounts in the name of Home Farm Equestrian Centre (or "HFEC") totalling £6,048,864.96 between 22 April 2016 and 18 January 2018. HFEC was a trading name for Mr Golding as a sole trader.

2021. I find that Mr Golding gave no value for these receipts from LCF. To the extent that some were characterised as loans to him, his executory promise to repay a loan was not value for these purposes, as explained above. In any case, Mr Golding had notice of impropriety in the conduct of LCF's business, as explained above.

2022. Moreover, as part of these amounts, Mr Golding received a gross total of £1,444,425 into his personal and HFEC bank accounts before 3 October 2016, the earliest date on which a facility agreement between LCF and Mr Golding was executed (it was backdated to 20 November 2015). The loan agreement with Mr Golding was created to justify sums which had already been paid from LCF to Mr Golding and which were already subject to LCF's equitable interest, and so could not be relied upon as providing value at the time of receipt by Mr Golding.

Payments from LCM to Mr Golding

2023. LCM paid a total of £30,000 to Mr Golding on 7 April 2017. This was funded by a payment from LCF to LCM directly of £94,800 the same day.

2024. I find that LCM was on notice that the sums had been paid out of LCF in breach of fiduciary duty. Mr Thomson was a director of LCM from 29 June 2016 onwards. His knowledge is to be attributed to LCM.

2025. There is nothing to show that Mr Golding gave any value for the receipt of sums from LCM. The loan agreement ostensibly dated 1 November 2018 (but in fact backdated to that date) cannot be relied upon as providing value at the time of receipt by Mr Golding. In any event, Mr Golding's purely executory promise to repay a loan is not value for these purposes, as explained above. I also find that Mr Golding had notice of impropriety, as explained above.

Payments from London Group LLP to Mr Golding

2026. London Group LLP paid a total of £6,886,675 to Mr Golding between 1 December 2017 and 23 May 2018.

2027. I find that these sums were funded entirely by sums paid from LCF, through two routes. During this period (i) London Group LLP was funded by GAD in the total net sum of £5,640,000; and (ii) London Group LLP was funded by LOG in the total net sum of £13,192,400.

2028. These two companies in turn received funds traceable to LCF from other intermediate sources. GAD received sums from L&TD (in turn funded by LCF), as well as sums from LCF directly. LOG received sums from GRP (which in turn was funded by LCF), as well as sums from LCF directly.

2029. Starting with GAD, all of the payments from GAD to London Group LLP were made within the period in which London Group LLP made onward payments to Mr Golding. GAD paid a net total of £5,640,000 to London Group LLP between 8 December 2017 and 29 January 2018, therefore falling within the period between 1 December 2017 and 23 May 2018 in which London Group LLP made payments to Mr Golding. No basis has been given for concluding that London Group LLP gave value for the receipt of sums from GAD.

2030. In turn, the sums which GAD paid to London Group LLP during this date range were funded by LCF through two routes.

2031. The first route was that LCF made payments to GAD directly:

i. LCF made direct payments to GAD: (i) up to and including 1 December 2017, LCF paid GAD a net total of £2,290,301.56; and (ii) between 2 December 2017 and 23 May 2018, LCF paid to GAD a net total of £9,506,792.57. The combined net total is £11,797,094.13.

ii. I find that GAD was on notice that the sums had been paid out of LCF in breach of fiduciary duty. As to this: (i) Mr Thomson was a director of GAD until 15 August 2015, such that GAD had knowledge of all the facts known to Mr Thomson as at 15 August 2015; (ii) Mr Hume-Kendall was a director of GAD between 11 March

2015 and 7 December 2017, such that GAD had knowledge of all the facts known to Mr Hume-Kendall as at 7 December 2017; (iii) Mr Barker was a director of GAD between 1 October 2015 and 7 December 2017, such that GAD had knowledge of all the facts known to Mr Barker as at 7 December 2017; (iv) Mr Sedgwick was a director and/or company secretary of GAD until 19 November 2018. I find (on the basis of the detailed findings above) that each of them had notice of impropriety.

iii. No basis has been advanced for concluding that GAD gave any value for these receipts from LCF.

iv. As explained above, some sums were paid from GAD back to LCF, in order to meet LCF's interest liabilities to bondholders. However, under general tracing principles, LCF is entitled to treat any sums deriving from it which were retained by GAD and paid to London Group LLP as subject to LCF's subsisting equitable interest. LCF is entitled to locate its equitable interest in sums paid to other borrowing companies (and used ultimately to acquire assets), rather than sums withdrawn.

2032. The second route was that GAD was funded indirectly by L&TD before and during the period in which GAD made onward payments to London Group LLP. In turn, L&TD was funded by LCF:

i. GAD was funded by L&TD: all of the payments made from L&TD to GAD were made by 13 April 2017, which is before the start of the period during which GAD made onward payments to London Group LLP (from 1 December 2017 onwards). L&TD paid to GAD a net total of £1,399,094.53. For the reasons given already, GAD was on notice that the sums had been paid out of LCF in breach of fiduciary duty. There is no basis for concluding that GAD gave value for its receipts from L&TD.

ii. Before and during the period in which L&TD made onward payments to GAD (which funded London Group LLP, and then Mr Golding), L&TD was funded by LCF: (i) up to and including 18 September 2015, LCF had paid to L&TD the net sum of £149,650; and (ii) between 19 September 2015 and 13 April 2017, LCF paid to L&TD a net total of £26,076,134.59. This gives rise to a combined net total of £26,225,784.59. For reasons already given, L&TD was on notice that the sums had been paid out of LCF in breach of fiduciary duty, and did not give value for the receipt of sums to it.

2033. Turning, back to the sums paid from London Group LLP to Mr Golding, these were funded through LOG. The first payment from LOG to London Group LLP was made on 5 February 2018. In the period from 5 February 2018 until 23 May 2018 (i.e. within the period in which London Group LLP made onward payments to Mr Golding), LOG paid to London Group LLP a net total of £13,192,400. London Group LLP did not give value for its receipts from LOG.

2034. The sums paid from LOG to London Group LLP during this date range were funded by LCF by two main routes.

2035. The first route was that LCF made payments to LOG directly:

i. LCF made direct payments to LOG: (i) up to and including 5 February 2018, the date of the first payment from LOG to London Group LLP, LCF had paid to LOG a net total of £16,445,568.85; and (ii) between 6 February 2018 and 23 May 2018 LCF paid to LOG a net total of at least £17,610,446.97. This gives rise to a combined net total of £34,056,015.82.

ii. I find that LOG was on notice of impropriety by the directors of LCF in making the payments. In this regard, (i) Mr Hume-Kendall was a director of LOG until 26 March 2019, (ii) Mr Barker was a director of LOG from 17 November 2015 onwards, and (iii) Mr Sedgwick was the company secretary of LOG from 24 October 2017 until 14 February 2018. I find (on the basis of the detailed findings above) that each of them had notice of impropriety.

iii. LOG did not give value for these receipts. LOG's executory promise to repay the loan under its agreement with LCF is not value for these purposes, as explained above.

2036. The second route was that LOG was funded by GRP, which had been funded in turn by LCF:

i. GRP made payments to LOG between 4 August 2016 and 16 January 2017, which is before the date of the first onward payment from LOG to London Group LLP. GRP paid a net total of £722,500 to LOG in this period. For reasons already given, LOG was on notice that the sums had been paid out of LCF in breach of fiduciary duty. LOG did not give value for its receipts from GRP.

ii. In turn, the sums paid from GRP were funded by sums paid from LCF. In the period up to and including 4 August 2016 (the date of the first onward payment from GRP to LOG), LCF had paid to GRP a net total of £2,211,556.03. No payments from LCF to GRP were made during the period when GRP was funding LOG.

iii. GRP was on notice of impropriety in relation to the payments from LCF. As to this, (i) Mr Hume-Kendall was a director of GRP from 30 December 2014 until 5 May 2017, and from 6 December 2017 onwards; (ii) Mr Barker was a director of GRP between 28 August 2015 and 5 May 2017, and from 6 December 2017 onwards; (iii) Mr Sedgwick was the company secretary of GRP from 28 August 2015 until 12 March 2018. I find (on the basis of the detailed findings above) that each of them had notice of impropriety.

iv. GRP did not give value for any of its receipts from LCF. The Elysian SPA cannot have generated value. The transaction purported to deal with shares in GRP, but GRP was not to give anything, and in any event, the preference shares were not issued, as explained above.

v. The changes to the lending arrangements that accompanied the Elysian SPA cannot have amounted to value from GRP: (i) GRP did not enter into any facility agreement with LCF; (ii) the executory promise of GRP's subsidiaries to repay loans to LCF is not value for these purposes, as explained above.

2037. Moreover, London Group LLP was on notice that the sums it had received (£5,640,000 through GAD, and £13,192,400 through LOG) had been paid out of LCF in breach of

fiduciary duty. As to this, Mr Hume-Kendall and Mr Barker were the members of London Group LLP at all material times. I find (on the basis of the detailed findings above) that each of them had notice of impropriety. As already explained, London Group LLP did not give value for its receipts from GAD or LOG.

2038. For these reasons, I find that LCF's equitable interest subsisted through payments (i) from LCF through L&TD and/or GAD, and London Group LLP, which were used to fund payments to Mr Golding; and (ii) from LCF through GRP and/or LOG, which were used to fund payments to Mr Golding.

2039. No basis has been advanced to conclude that Mr Golding gave value for his receipts from London Group LLP. In any event, no basis has been advanced to conclude that he was a bona fide purchaser without notice.

Payments from LOG to Mr Golding

2040. I find that LOG paid a total of £340,321.50 to Mr Golding between 4 October 2016 and 27 October 2017. These sums were funded by sums paid from LCF.

2041. The sums paid from LOG before and during this period were funded by LCF in two main ways. These payment routes have been explained above. LOG received payments from LCF directly (the net total of which was £12,001,750.52) and payments from GRP, which had been funded by LCF (the net total of which was £722,500).

2042. For reasons given above, LOG was on notice that the sums had been paid out of LCF in breach of fiduciary duty and that LOG did not give value for its receipts from GRP.

2043. Equally (as explained above), the sums paid from GRP were funded by sums paid from LCF. GRP was on notice that there was a serious risk that the sums had been paid out of LCF in breach of fiduciary duty and did not give value for its receipts from LCF.

2044. No basis has been advanced on which to conclude that Mr Golding gave value for his receipts from LOG or that he was a bona fide purchaser without notice.

Payments from London Power Consultants to Mr Golding

2045. London Power Consultants paid a total of at least £1,033,125 to Mr Golding between 22 May 2018 and 1 August 2018.

2046. The payments from London Power Consultants to Mr Golding in the period from 22 May 2018 to 1 August 2018 were funded by LCF in two ways: from LCF directly (the net sum of £2,952,077.50), and from GCEN, which held sums for LCF (the net sum of £1,452,052.50).

2047. As to the first of these routes, LCF made payments directly to London Power Consultants: (i) before 22 May 2018, i.e. the date of the start of onward payments from London Power Consultants to Mr Golding, LCF had paid to London Power Consultants £1,500,025, and (ii) between 23 May 2018 and 1 August 2018, LCF paid to London Power Consultants £1,452,052.50.

2048. The second route was that GCEN began making payments to London Power Consultants on 5 June 2018, and in the period to 1 August 2018 paid a total of £1,452,052.50 to London Power Consultants (from the GCEN LCF Distribution Account).

2049. I find that London Power Consultants was on notice that the sums had been paid out of LCF in breach of fiduciary duty. As to this, Mr Barker was the director of London Power Consultants at all material times. I find (on the basis of the detailed findings above) that he had notice of impropriety.

2050. There is no basis for concluding that London Power Consultants gave value for the receipt of sums from LCF. The fact that some sums paid to London Power Consultants were ostensibly borrowed from LCF by Prime RDL, but paid to London Power Consultants cannot amount to value by London Power Consultants. In any event, the executory promise of Prime RDL's subsidiaries to repay loans is not "value," as explained above, and (ii) London Power Consultants had notice in the relevant sense.

2051. No basis has been advanced for concluding that Mr Golding gave value for his receipts from London Power Consultants; and he was not a bona fide purchaser without notice.

Payments from LPC to Mr Golding

2052. LPC paid a total of at least £1,371,000 to Mr Golding between 31 August 2018 and 3 December 2018.

2053. I find that before and during the period when LPC was making payments to Mr Golding, LPC was funded by LCF by payments made directly from LCF: (i) up to and including 31 August 2018, the date on which LPC began payments to Mr Golding, LCF had paid to LPC £1,801,150; and (ii) between 1 September 2018 and 3 December 2018, when LPC was making payments to Mr Golding, LCF paid to LPC £11,453,232. The combined net total is £13,254,382.

2054. I find that LPC was on notice that the sums it received from LCF had been paid out of LCF in breach of fiduciary duty. As to this, (i) Mr Hume-Kendall was a director of LPC at all material times, (ii) Mr Barker was a director of LPC at all material times, and (iii) Mr Sedgwick was the company secretary of LPC until 14 February 2018. I find (on the basis of the detailed findings above) that each of them had notice of impropriety.

2055. LPC did not give value for its receipts from LCF. LPC was not party to any loan agreement with LCF on which Mr Golding might rely, and instead received funds as a volunteer. Neither the LPE SPA nor the LPT SPA has any bearing, because LPC was not party to the documents in either transaction.

2056. No basis has been advanced for concluding that Mr Golding gave value for his receipts from LPC; or that he was a bona fide purchaser without notice.

Payment from One Monday to Mr Golding

2057. One Monday paid Mr Golding the sum of £32,824 between 29 November 2013 and 2 July 2014. This was funded by LCF (as SAFE).

2058. After SAFE began selling bonds, the sums from SAFE investors were paid to Buss Murton, which transferred them to One Monday.

2059. The Claimants have collected incomplete bank statements for SAFE and One Monday during this period, so the record has gaps. However, from the documents and information they have available, the Claimants have identified that One Monday received at least £898,076.33 of SAFE funds in the period 1 October 2013 to 1 July 2015.

2060. I find that One Monday was on notice that sums had been paid out of LCF (including as SAFE). As to this: (i) Mr Thomson was a director of One Monday from 9 May 2012 until 2 February 2016; and (ii) Mr Barker was a director of One Monday from 14 August 2013 until 24 July 2015. I find (on the basis of the detailed findings above) that each of them had notice of impropriety.

2061. No basis has been advanced for concluding that Mr Golding gave value for his receipt from One Monday; or that he was a bona fide purchaser without notice.

Payments from Sands Equity to Mr Golding

2062. Sands Equity paid a total of £5,014,375 to Mr Golding between 19 May 2017 and 1 December 2017. These sums were funded by sums paid from LCF, as explained below.

2063. Sands Equity was used as a payment intermediary. It paid (and received) sums from numerous different sources.

2064. There were three principal routes by which sums paid by Sands Equity to Mr Golding (and others) were funded by LCF.

2065. First, Sands Equity was funded by GRP (in the net sum of £14,678,771), which was ultimately funded by LCF; second, it was funded directly by LCF (in the net sum of £258,253.39); and third, it was funded by GAD (in the net sum of £1,883,270), which was ultimately funded by LCF. The Claimants have analysed the money flows in detail. I shall not set them out here, but I am satisfied of the accuracy of the Claimants' analysis.

2066. Some of the payments were made indirectly via L&TD to GRP. As already explained, I have found that (i) GRP was on notice that sums had been paid out of LCF in breach of fiduciary duty and it did not give any value for its receipts from LCF; and (ii) L&TD was on notice that sums had been paid out of LCF in breach of fiduciary duty and L&TD did not give any value for its receipts from LCF.

2067. I also find that GRP also did not give any value for its receipts from L&TD. As to the Elysian transaction, (i) almost all of the sums paid from L&TD to GRP had already been received by GRP before the transaction documents were executed on or around 29 April 2017; and (ii) in any case, GRP was not party to any loan agreement with L&TD and instead received funds as a volunteer.

2068. As to the third route, as already explained, GAD was on notice that sums had been paid out of LCF in breach of fiduciary duty and it did not give any value for its receipts from LCF.

2069. I find that Sands Equity was on notice that the sums had been paid out of LCF in breach of fiduciary duty. As to this (i) Mr Thomson was a director of Sands Equity from 21 August 2014 until 15 August 2015, (ii) Mr Sedgwick was a director of Sands Equity between 21 August 2014 and 12 March 2018, and from April 2018 onwards, (iii) Mr

Hume-Kendall was a director of Sands Equity between 28 January 2015 and 4 May 2018, and (iv) (as I find) Mr Golding was ultimately in control of Sands Equity at all material times. I find (on the basis of the detailed findings above) that each of them had notice of impropriety.

2070. No basis has been advanced for concluding that Mr Golding gave value for his receipts from Sands Equity; or that he was a bona fide purchaser without notice.

Payments from Surge to Mr Golding

2071. Surge paid a total of £1,698,375.50 to Mr Golding between 18 August 2015 and 8 November 2018.

2072. Of this, £1,669,375.50 represents payments made to Mr Golding calculated on the basis of the sum equal to 1% of LCF's gross receipts from new bondholders in the previous month. These were made between 23 November 2017 and 8 November 2018. I have set out my factual findings in this regard in detail above.

2073. These sums were funded entirely by sums paid from LCF. I shall address the status of these sums in the hands of Surge below.

2074. Mr Golding did not give value for his receipts from Surge, which were paid by reference to 1% of new bondholder investments. As explained above, they amounted to a secret commission to ensure that Mr Golding would not use his control of LCF to reduce the 25% commission arrangement.

2075. There was separately a loan of £25,000 to Mr Careless on 18 November 2015 which was repaid by Surge. This might be considered to amount to the giving of value by Mr Golding. However, I am satisfied that Mr Golding was on notice at all material times that sums had been paid out of LCF to Surge in breach of fiduciary duty. Hence, Mr Golding has not established the bona fide purchaser defence.

Assets acquired by Mr Golding with LCF's monies

2076. For these reasons, I am satisfied that Mr Golding received £43,428,758.50 traceable to LCF.

2077. As already explained, I have found him to be a defaulting fiduciary. These payments were made to him as a result of his defaults. He therefore holds them on constructive trust. This includes the sums received from Surge.

2078. Alternatively, I find that LCF has an equitable proprietary claim for these amounts. Mr Golding has not established that he was a bona fide purchaser without notice or that he gave value for his receipts.

2079. It follows that LCF is entitled to all of Mr Golding's assets which were acquired with sums he received which (i) are traceable to LCF, or (ii) were paid to him as a result of his defaults as a fiduciary.

2080. Mr Golding has accepted that the assets disclosed pursuant to both the worldwide freezing order and the proprietary freezing order against him were acquired with sums either deriving from LCF or which had been mixed with sums deriving from LCF.

2081. The worldwide freezing order was made against Mr Golding on 24 August 2020 and was continued on 7 September 2020. This obliged Mr Golding to give disclosure of all of his assets exceeding £1,000 in value. Mr Golding served three affidavits giving disclosure of his assets, dated 4 September 2020, 13 November 2020, and 24 June 2021.

2082. The Claimants then obtained a proprietary freezing order against Mr Golding on 28 June 2021. Mr Golding consented to the order expressly on the basis that the assets contained in his disclosure were acquired either with sums deriving from LCF, or with sums mixed with sums deriving from LCF, as provided by the fifth and sixth recitals to the order.

2083. I am satisfied that under general tracing rules, LCF is entitled to presume that where mixed funds were used by Mr Golding to acquire an asset, the asset was acquired using LCF's property (rather than property belonging to Mr Golding from a different source); and to claim a lien over it: *Foskett v McKeown* [2001] 1 AC 102 at p. 131.

2084. As already noted, Mr Golding has been debarred from defending the proceedings, and is therefore debarred from seeking to prove that any of his disclosed assets was acquired with property not originating from LCF, or that any mixture of property traceable to LCF with property not originating from LCF was insufficient to acquire his disclosed assets.

2085. I am, in any case, satisfied on the balance of probabilities that all of Mr Golding's disclosed assets were in fact acquired using property traceable to LCF. The amount of money originating from LCF that was received by Mr Golding far exceeds the value of the assets which Mr Golding has disclosed. As explained above, Mr Golding received at least £43.4 million deriving from LCF in the period before LCF's collapse. Mr Golding accepts that all his disclosed assets were acquired after he began receiving sums derived from LCF. The assets disclosed by Mr Golding include properties, luxury cars and other vehicles, jewellery, and watches. Absent any other explanation, it is reasonable on the balance of probabilities to conclude that all of Mr Golding's disclosed assets referred to above were acquired with LCF's property, and that LCF is beneficially entitled to all of those assets in full.

2086. I shall make appropriate declarations for the sale or delivery up of Mr Golding's declared assets to the joint administrators of LCF. I invite further submissions on the details.

Equitable proprietary claims against Mr Thomson

2087. Mr Thomson has admitted that all of the property he currently holds is derived from funds traceable from LCF, or from assets mixed with such traceable funds.

2088. As already explained, Mr Thomson was in breach of his fiduciary duties. I have also held that the business of LCF was conducted fraudulently, and that Mr Thomson participated in this. I find that all of Mr Thomson's receipts of assets deriving from LCF resulted directly or indirectly from his breaches of fiduciary duty. It follows that the assets received by him deriving from the property of LCF were received and are held by Mr Thomson on constructive trust for LCF.

2089. This liability falls on Mr Thomson as a fiduciary.

2090. It also follows that the Claimants are not required to establish separately their proprietary claims to assets paid to Mr Thomson via other companies. However, for completeness, I shall address the tracing exercise.

2091. As a general defence to this claim, Mr Thomson sought to rely on the alleged buy-out agreement (i.e. the MOU/SPA dated 15 July 2015 on their face) to seek to justify the receipts from the numerous connected companies. I have already found these documents to be later concoctions. There was no such agreement in July 2015. In any case, LCF was not party to the MOU/SPA, which on its face was entered into between Mr Thomson, Mr Hume-Kendall, and Mr Barker.

Payments from GCEN to Mr Thomson

2092. GCEN paid a total of £1,698,596 to Mr Thomson between 22 June 2018 and 27 November 2018. As explained above in relation to Mr Golding, these were in substance direct payments from LCF to Mr Thomson.

2093. Mr Thomson's only justification for these receipts is the 2015 MOU/SPA, which is addressed above. Further, the LPT SPA and LPE SPA transactions cannot justify Mr Thomson's receipt for the reasons given above in relation to Mr Golding, which also apply to Mr Thomson.

Payments from L&TD to Mr Thomson

2094. L&TD paid a total of at least £991,361.11 to Mr Thomson between 18 February 2016 and 4 May 2017.

2095. As explained above in relation to Mr Golding, the sums paid from L&TD to Mr Thomson during this period were entirely funded by sums paid from LCF.

2096. For the same reasons as apply to Mr Golding, L&TD was on notice that the sums had been paid out of LCF in breach of fiduciary duty, and L&TD did not give any value for the receipt of sums from LCF.

2097. Mr Thomson's only justification is the 2015 MOU/SPA, which is addressed above. Further, neither the Lakeview SPA nor any other transaction can justify Mr Thomson's receipts.

Payments from LCM to Mr Thomson

2098. LCM paid a total of £30,000 to Mr Thomson on 7 April 2017.

2099. As explained above in relation to Mr Golding, this was funded by a payment from LCF to LCM directly of £94,800 the same day.

2100. For the same reasons as given for Mr Golding, LCM was on notice that the sums had been paid out of LCF in breach of fiduciary duty.

2101. Mr Thomson has not satisfied me that he gave value for his receipts from LCM. Mr Thomson said in his witness statement that this payment was made "for my work on the company set up and developing a network of regulated distributors". However: (i) Mr Thomson's evidence was generally unreliable and cannot safely be accepted without

corroboration; (ii) there is no documentary record of any such services being provided; (iii) Mr Thomson has not explained why money was paid from LCF to LCM; (iv) Mr Thomson's statement does not explain why the money was paid from LCF to LCM, and then from LCM to Mr Thomson.

Payments from London Group LLP to Mr Thomson

2102. London Group LLP paid a total of at least £882,000 to Mr Thomson between 8 December 2017 and 20 April 2018.

2103. As explained above, the sums paid from London Group LLP to Mr Thomson during this period were entirely funded by sums paid from LCF. For the reasons given in relation to Mr Golding: (i) the intermediate companies which received funds originating from LCF were on notice that the sums had been paid out of LCF in breach of fiduciary duty, and (ii) none of those intermediate companies gave value for their receipts.

2104. Mr Thomson's only justification for these payments is the 2015 MOU/SPA, which is addressed above. As already explained, the various SPA transactions cannot justify these receipts.

Payments from London Power Consultants to Mr Thomson

2105. London Power Consultants paid a total of at least £195,000 to Mr Thomson between 22 May 2018 and 7 June 2018.

2106. As explained above, the sums paid from London Power Consultants to Mr Thomson during this period were entirely funded by sums paid from LCF. For reasons given above in relation to Mr Golding, London Power Consultants was on notice that the sums had been paid out of LCF in breach of fiduciary duty, and it did not give any value for the receipt of sums from LCF.

2107. Mr Thomson has not sought to provide any justification for these receipts. Further, neither the 2015 MOU/SPA nor the various SPA transactions can justify these receipts for the reasons given above.

Payments from LPC to Mr Thomson

2108. LPC paid a total of at least £315,000 to Mr Thomson between 12 September 2018 and 16 November 2018.

2109. As explained above, the sums paid from London Group LPC to Mr Thomson during this period were entirely funded by sums paid from LCF. As also explained above in relation to Mr Golding, (i) the intermediate companies which received funds originating from LCF were on notice that the sums had been paid out of LCF in breach of fiduciary duty, and (ii) none of those intermediate companies gave value for their receipts.

2110. Mr Thomson's only justification for these receipts is the 2015 MOU/SPA, which is addressed above. None of the SPA transactions can justify these receipts.

Payments from Media GPS to Mr Thomson

2111. According to Mr Thomson's witness statement, he received £646,000 from Media GPS. The Claimants have not taken issue with this. At least £587,500 can be verified from the available bank statements in the period from 6 July 2016 to 11 December 2017.

2112. I find that these sums were funded by sums paid from LCF by two routes: (i) LCF made payments to Surge, which funded payments to Media GPS; and (ii) sums were paid from LCF to Media GPS directly.

2113. As to the first route, LCF made payments to Surge, which funded payments to Media GPS. I address below the Claimants' claim that LCF continued to have an equitable interest in the property in the hands of Surge. For the reasons given there, I find that LCF did indeed continue to have such an interest.

2114. Surge in turn made payments to Media GPS in the sum of £403,381.48 between 14 June 2016 and 6 September 2017. These payments correspond to the invoices submitted by Mr Thomson to Surge, calculated on the basis of the sum equal to 0.5% of LCF's gross receipts from new bondholders in the previous month. I have made detailed findings about these payments above.

2115. As to the second route, LCF made payments to Media GPS directly. Between 25 November 2016 and 11 December 2017, LCF paid £275,000 to Media GPS. Media GPS had other no source of funding than payments deriving from LCF in this period.

2116. As a result, Media GPS was funded by a total of £678,381.48 of LCF's assets, with which to fund onward payments to Mr Thomson of £646,000.

2117. I find that Media GPS was on notice that the sums had been paid out of LCF in breach of fiduciary duty. The sole shareholder and director of Media GPS is Ronald Thomson, Mr Thomson's father. However, Mr Thomson's knowledge is to be attributed to Media GPS for this purpose: (i) Mr Thomson acted and made agreements ostensibly on its behalf, as Mr Thomson explained to Mr Careless from the outset on 14 June 2016; (ii) Mr Thomson submitted all of the invoices on behalf of Media GPS to Surge; (iii) Mr Thomson corresponded with Mr Careless and Surge in connection with making payments to Media GPS; (iv) third parties recognised that Mr Thomson controlled Media GPS and dealt with him ("Andy's invoice has been paid"); and (v) Mr Thomson recounts in his witness statement that he made decisions in relation to payments made through Media GPS. I find that he was a de facto director or other agent of Media GPS and that his knowledge should be attributed to it.

2118. Mr Thomson has not satisfied the burden of demonstrating that Media GPS gave value. As explained above, on his oral evidence, Mr Thomson asserted that the payments to Media GPS were justified because his father carried out proofreading for LCF. I have rejected this evidence at [747] above.

2119. In any event, Media GPS had notice of impropriety in the relevant sense.

2120. Mr Thomson described the payments from Media GPS to him as a "combination of Christmas bonuses from [LCF] and consultancy earnings from Surge". I have rejected his evidence about Christmas bonuses at [751] above, and about consultancy earnings at [1119] above. He has not satisfied the burden of establishing that he gave any value for the payments to him personally. In any event, he was on notice of impropriety.

Payments from Sands Equity to Mr Thomson

2121. Sands Equity paid a total of £593,750 to Mr Thomson between 19 May 2017 and 1 December 2017.

2122. As explained above, the sums paid from Sands Equity to Mr Thomson during this period were entirely funded by sums paid from LCF. As also explained above in relation to Mr Golding: (i) the intermediate companies which received funds originating from LCF were on notice that the sums had been paid out of LCF in breach of fiduciary duty, and (ii) none of those intermediate companies gave value for their receipts.

2123. Mr Thomson's only justification for these receipts is the 2015 MOU/SPA, which is addressed above. None of the SPA transactions can justify the receipts.

Assets acquired by Mr Thomson with LCF's property

2124. Mr Thomson thus received at least £5,351,707.11 of LCF's funds subject to LCF's equitable interest. For the reasons detailed above, these assets were immediately held by Mr Thomson on constructive trust for LCF upon receipt by him, by virtue of his continuing fiduciary duties to LCF. In any event (though it is not necessary for the Claimants to establish this), all such funds are traceable by LCF, as explained above.

2125. LCF is entitled to such of Mr Thomson's assets as were acquired with these funds. By virtue of Mr Thomson's fiduciary position, LCF is entitled to presume that Mr Thomson withdrew or spent his own funds (rather than LCF's). If Mr Thomson used these funds to acquire assets, LCF is entitled to locate its subsisting equitable interest in the sums used by Mr Thomson to acquire assets, and therefore in the assets so acquired.

2126. Mr Thomson has not sought to rebut this presumption by seeking to demonstrate that any of his assets were acquired entirely with funds not originating from LCF. Indeed, Mr Thomson has accepted in affidavit evidence that all of his assets were acquired with money traceable from LCF or mixed with such funds. Mr Thomson expressly consented to the proprietary injunction order which was made against him on 13 July 2021 on this basis.

2127. Mr Thomson has not adduced any evidence as to the proportions in which any assets were acquired with money derived from LCF, on the one hand, and his own property, on the other.

2128. LCF is entitled to a lien or charge for the amount of its proprietary claims over all of the assets which were acquired by Mr Thomson (which he accepts were either bought with LCF-derived money, or with a mixture of such money and his own). The amounts originating from LCF that were received by Mr Thomson greatly exceed the value of the assets which Mr Thomson has disclosed. I shall make appropriate declarations. I invite further submissions, including as to whether Mr Thomson's assets should be sold or delivered up to LCF's joint administrators.

Equitable proprietary claims against Mr Careless and Surge

2129. LCF paid to Surge the total sum of £61,025,702.18 in the period from 17 March 2015 to 7 December 2018.

2130. This sum represented the 25% commission arrangement.

2131. I have concluded that the arrangements for these payments constituted a breach of fiduciary duty by Mr Thomson and Mr Golding: see [1945.ii] above.

2132. On this basis, and applying the principles set out above, LCF is entitled to follow and trace its property unless and until the recipients establish that they are bona fide purchasers for value without notice.

2133. I have rejected the Surge Defendants' submission that the claim is barred because of the subsistence of the contract for services between LCF and Surge. For the reasons given above, it is not a pre-condition for an equitable proprietary claim that the Claimants must apply to set aside the contract.

2134. For the reasons detailed above, I have concluded that Mr Careless had knowledge of LCF's FCOB for the entire period of Surge's engagement by LCF. More specifically, I have found that Mr Careless had such knowledge from July 2015 onwards. Mr Careless's state of mind is to be attributed to Surge. It follows that Surge was on "notice" at all material times that the payment of the commissions from LCF to Surge involved impropriety. Surge has therefore failed to establish an absence of notice for all receipts from LCF after that date.

2135. The overwhelming majority of funds received by Surge originated from LCF.

2136. Surge's other client (Blackmore) paid the total sum of £8,020,627.28 to Surge. I find that LCF is entitled rely on the presumptions identified above (including that any funds paid out of Surge's accounts to third parties were from its own assets) and to locate its subsisting equitable interest in the sums held by a recipient which were used ultimately to acquire assets.

2137. I find that the Claimants are entitled in principle to a declaration that LCF is entitled to the traceable proceeds of all amounts paid by it to Surge after July 2015. I shall hear submissions about the terms of any declarations concerning Surge.

Onward payments by Surge to Mr Careless

2138. By far the greater share of Surge's income came from LCF, as Mr Careless accepted in his evidence. The Claimants have obtained a number of bank statements from companies connected with Mr Careless and Surge under the *Bankers Trust* jurisdiction, which were believed to have received funds from Surge. Using this material the Claimants prepared a schedule which estimated the sums paid to Mr Careless and persons connected with him. In cross-examination, Mr Careless accepted the broad figures included in that schedule, and that he received in the region of £11 million. The Claimants have identified certain specific amounts which they contend are traceable to LCF and in respect of which they seek order against Mr Careless. These are addressed in the following sections.

Payments from Surge to Mr Careless

2139. The Claimants contend that Surge paid a gross total of at least £5,903,700 to Mr Careless between 30 March 2015 and 22 August 2022. They contend that Mr Careless received this subject to LCF's prior equitable interest on the basis that he had notice of Mr

Thomson's and Mr Golding's breaches of duty. They say that in any event, Mr Careless has not established that he gave value for his receipts. I accept the Claimants' case on each of these points.

Payments from Surge Group to Mr Careless

2140. Surge Group (another company controlled by Mr Careless) paid a gross total of at least £1,411,768.73 to Mr Careless between 13 March 2018 and 25 July 2022.

2141. I find that these payments from Surge Group were funded by Surge. In the period to 25 July 2022, Surge directly paid Surge Group the gross sum of £11,284,900 (£10,247,690 on a net basis). There is no evidence that Surge Group conducted any other business or generated any other income. Payments into Surge Group from Surge represent almost the entirety of its receipts as shown by its bank statements.

2142. During the same period (up to and including 25 July 2022), other companies connected with Mr Careless and Surge made payments to Surge Group using funds deriving (at least in part) from LCF: Aston Beckworth paid the net sum of £10,534.25 to Surge Group; InfoConnection paid the net sum of £28,600 to Surge Group; RP Digital paid the net sum of £136,522.75 to Surge Group; and Service Box paid at least the net sum of £638,294.80 to Surge Group.

2143. As regards notice, Surge Group is in the same position as Surge (see above). Mr Careless was a director of Surge Group from 7 July 2017 onwards and his knowledge is to be attributed to it. No basis has been advanced on which to conclude that Surge Group gave value for its receipts from Surge or from the other connected companies referred to in the previous paragraph above.

Payments from RP Digital to Mr Careless

2144. RP Digital paid the total of at least £355,950 to Mr Careless between 25 November 2015 and 5 February 2020.

2145. These payments from RP Digital were funded by Surge. In the period to 5 February 2020, Surge directly paid RP Digital the gross total of £19,168,340 (£17,179,703.06 on a net basis). I find that the payments to RP Digital were directly funded by Surge.

2146. During the same period (to and including 5 February 2020), other companies connected with Mr Careless and Surge made payments to RP Digital using funds deriving (at least in part) from LCF: InfoConnection paid the net sum of £161,400 to RP Digital; Service Box paid the net sum of £190,000 to RP Digital; Crucial Group paid the net sum of £64,160 to RP Digital; and View Property Group paid the net sum of £71,000 to RP Digital.

2147. I find that RP Digital was set up by Mr Careless and his friend Mr Ronak Patel and was controlled by Mr Careless and Mr Jones. RP Digital made payments on behalf of Surge which represented aspects of Surge's conduct of business, such as payments to Google and Facebook. Details are given above. Mr Jones was a director of RP Digital, whilst also being a finance director of Surge.

2148. RP Digital was involved in making payments for the personal benefit of Mr Careless, apparently at his direction, as an alternative to making a payment from Surge directly. There is no evidential basis for concluding that Mr Careless provided any value in return for these payments.

2149. RP Digital does not appear to have any other business of its own. It operated as a payment intermediary between Surge and others and was used among other things to make personal payments to Mr Careless, Mr Jones, and Aston Beckworth (which was owned by Mr Careless and Ms Venn).

2150. I conclude that the knowledge of Mr Careless is to be attributed to RP Digital. For reasons already given, Mr Careless had notice that the sums derived by RP Digital from LCF were paid from LCF improperly.

2151. Mr Careless has advanced no basis for concluding that RP Digital gave value for its receipts from Surge or the other companies connected with the Surge Defendants.

Payments from Aston Beckworth to Mr Careless

2152. Aston Beckworth paid a gross total of at least £715,388 to Mr Careless between 13 July 2016 and 11 November 2023.

2153. I find that the funds from which Aston Beckworth made these payments had been funded by Surge.

2154. The principal source of funding for Aston Beckworth was RP Digital, which (as explained above) received considerable sums from Surge directly.

2155. RP Digital made payments to Aston Beckworth between 9 June 2016 and 3 April 2020 in the gross sum of £2,250,900 (£2,192,300 on a net basis).

2156. As explained above, RP Digital was on notice that the sums had been paid out of LCF improperly and Mr Careless has not satisfied the burden of showing that RP Digital gave value.

2157. A second source of the sums paid from Aston Beckworth to Mr Careless was Service Box. Service Box paid £100,350 to Aston Beckworth in total, between 27 September 2019 and 20 July 2022.

2158. I find that Mr Careless's state of mind is to be attributed to Service Box. Mr Careless was a director from 25 October 2017 until 29 April 2019.

2159. In the period up to and including 20 July 2022, Surge paid Service Box the net sum of £799,000.

2160. There were further payments from Surge in the net amount of at least £68,750 in the period up to and including 11 November 2023.

2161. Aston Beckworth was owned by Mr Careless and Ms Venn. I have described earlier how Aston Beckworth made payments on behalf of Surge which represented aspects of Surge's conduct of business. Mr Careless was appointed as a director of Aston Beckworth on 11 April 2018. Before that the sole director was Mr Partridge. However, as described

earlier, its bank account was controlled by Mr Jones, the finance director of Surge. Aston Beckworth was also involved in making payments for the personal benefit of Mr Careless, apparently at his direction. Aston Beckworth does not appear to have any other business of its own. It operated as a payment intermediary, including to make personal payments to Mr Careless. For these reasons, I conclude that Mr Careless's state of mind is to be attributed to Aston Beckworth. It therefore had notice that its receipts of sums derived from LCF were paid in circumstances of impropriety.

2162. Mr Careless has advanced no basis for concluding that Aston Beckworth gave value for its receipts from Surge, and the same applies to the payment flows between the other Mr Careless/Surge connected companies. Nor is there any basis for concluding that Mr Careless gave any value to Aston Beckworth for its payments to him.

Assets acquired by Mr Careless with LCF's property

2163. I conclude that, for the reasons explained above, Mr Careless received at least £8,386,806.73 traceable (at least in large part) to payments made by LCF. I also conclude that Mr Careless cannot establish a lack of notice and good faith in respect of the sums he received which were derived from LCF. I find that Mr Careless was on notice that the funds had been paid out of LCF in circumstances of impropriety. Mr Careless has also not shown that he gave value for his receipts.

2164. LCF is entitled in principle to all of Mr Careless's assets which were acquired with sums he received which are traceable to payments made from LCF after July 2015 (the date on which I have found Mr Careless was on notice of impropriety). I shall make appropriate declarations and shall also order appropriate accounts and inquiries, about which I invite further submissions.

Equitable proprietary claims against Mr Russell-Murphy and GP

2165. I have found that the funds received by Surge from LCF after July 2015 were (and are held) subject to LCF's equitable interest. This is the date from which Mr Careless had notice of impropriety within LCF.

2166. The evidence shows that between 7 September 2015 and 1 September 2017 Surge paid £224,270 to Mr Russell-Murphy directly. Much of this derived ultimately from LCF.

2167. LCF is therefore entitled to follow and trace these sums unless and until Mr Russell-Murphy establishes that he was a bona fide purchaser for value without notice.

2168. Mr Russell-Murphy was also paid the total gross sum of £127,328.06 from Buss Murton's client account from 30 September 2013 onwards and throughout 2014. These are payments from LCF (as SAFE): (i) the Buss Murton client account was held on behalf of LCF (as SAFE), and so represents funds belonging to LCF; and (ii) the only explanation for commission payments to Mr Russell-Murphy during this period is Mr Russell-Murphy's activities selling SAFE's bonds.

2169. In his Defence, Mr Russell-Murphy asserts that he was a BFP. I have, however, found from the end of July 2015 he knew of that LCF's business was being carried on fraudulently. Moreover, Mr Russell-Murphy has not advanced any case that he was a

bona fide purchaser without notice in respect of the period before that. He has not discharged the burden of establishing those matters.

2170. The Claimants are therefore entitled in principle to declarations that they are entitled to the traceable proceeds of the payments made by LCF and received by Mr Russell-Murphy, and to appropriate accounts and inquiries. I invite further submissions.

2171. I turn to the amounts received by GP. Mr Russell-Murphy is the sole director and shareholder of GP. GP was his corporate vehicle. It is common ground that Mr Russell-Murphy's knowledge is to be attributed to GP.

2172. Surge made a number of payments to GP. Between 3 December 2015 and 29 March 2019, Surge paid a gross total of £2,325,281.81 to GP. I have addressed the issue of LCF's equitable claims in respect of payments it made to Surge above. To the extent that LCF has claims to such sums it is for GP to show that it was a BFP in respect of its relevant receipts from Surge.

2173. GP pleads that it was a BFP. It has not, however, participated in the proceedings or sought to establish this defence. I have found that Mr Russell-Murphy was aware of LCF's fraudulent trading from July 2015 so there can be no defence in respect of that period. Moreover, GP has not advanced any case that it was a bona fide purchaser without notice in respect of the period before that. It has not discharged the burden of establishing those matters.

2174. The Claimants are therefore entitled in principle to declarations that they are entitled to the traceable proceeds of the payments made by LCF and received by GP, and to appropriate accounts and inquiries.

2175. I will make appropriate declarations and order accounts and inquiries. I invite submissions on these.

Equitable proprietary claims against Mr Sedgwick

2176. The Claimants have identified a series of payments made to Mr Sedgwick deriving from the assets of LCF. They contend that none of the intermediate companies was a BFP. They also contend that Mr Sedgwick was not a BFP in respect of his own receipts of these sums.

2177. Mr Sedgwick chose not to give evidence. In finding the facts in this section, it is appropriate to draw adverse inferences from that decision.

2178. The first relevant set of payments was by Countrywide to Mr Sedgwick. Countrywide paid a total of £331,843.48 to Mr Sedgwick between 19 January 2018 and 30 December 2022. Countrywide was previously known as LV Management Limited and was under the control of Mr Hume-Kendall. Most of these payments were made from late 2018 onwards.

2179. These sums were funded by LCF in five ways:

i. First, Countrywide was funded by Sands Equity, which was funded by LCF. Between 14 August 2017 and 30 August 2017, Sands Equity paid Countrywide the

net sum of £50,000. As explained above in relation to Mr Golding, the sums paid to Sands Equity before and during this period were funded by sums paid from LCF.

ii. Second, Countrywide was funded by London Group LLP, which was funded by LCF. Between 1 December 2017 and 13 April 2018, London Group LLP paid Countrywide the net sum of £128,000. As explained above in relation to Mr Golding, the sums paid to London Group LLP before and during this period were funded by sums paid from LCF.

iii. Third, Countrywide was funded by London Power Consultants, which was funded by LCF. London Power Consultants made payments to Countrywide between 7 June 2018 and 1 August 2018, in the net sum of £100,130.50. Before the first of these payments, Countrywide had only paid £12,148.44 to Mr Sedgwick. As explained above in relation to Mr Golding, the sums paid to London Power Consultants before and during this period were funded by sums paid from LCF.

iv. Fourth, Countrywide was funded by LPC, which was funded by LCF. LPC made payments to Countrywide. Between 31 August 2018 to 18 December 2018, LPC paid £388,392.08 to Countrywide. As explained above in relation to Mr Golding, the sums paid to LPC before and during this period were funded by sums paid from LCF.

v. Fifth, Countrywide was funded by Mr Hume-Kendall, who was funded by LCF. By 4 September 2018, Countrywide had paid the sum of £122,211.13 to Mr Sedgwick. Between 4 September 2018 and 8 January 2019, Mr Hume-Kendall made payments to Countrywide and did so in the net sum of £443,000. As explained above, Mr Hume-Kendall received very large sums of money which originated from LCF. From GCEN alone, Mr Hume-Kendall had been paid a total of £7,708,302.50 from LCF by 4 September 2018. Mr Hume-Kendall was on notice that the sums had been paid out of LCF in breach of fiduciary duty, as explained above.

2180. I find that Countrywide was also on notice that the sums had been paid out of LCF in breach of fiduciary duty. Mr Hume-Kendall was a director of Countrywide from 31 August 2005 until 8 January 2019 (and company secretary until 26 May 2019) and I find that his state of mind is to be attributed to Countrywide. I have made findings about Mr Hume-Kendall's state of mind above.

2181. There is no evidence that Countryside carried on any independent business or had any other income than the payments derived as explained above from LCF. Mr Sedgwick was intimately involved in the business and affairs of Mr Hume-Kendall and Mr Golding and assisted them in designing and running their corporate structures. Details of this have been given above. On the balance of probabilities I conclude that Mr Sedgwick knew that the sums he was receiving from Countrywide derived from LCF.

2182. I find on the basis of these facts that Countrywide received the amounts derived from LCF set out above subject to the equitable proprietary claims of LCF.

2183. No basis has been suggested on which Mr Sedgwick gave value for his receipts from Countrywide, and Mr Sedgwick has not adduced any evidence to enable him to do so.

2184. In any event, I have found that Mr Sedgwick had knowledge of the fraudulent conduct of business of LCF at all material times. He was therefore on notice that the sums he was receiving were derived from such fraudulent trading. He has therefore failed to establish the BFP defence.

2185. In addition, GRP paid a total of £50,228.35 to Mr Sedgwick between 3 January 2017 and 17 August 2017.

2186. As explained above in relation to Mr Golding, the sums paid to GRP before and during this period were funded by sums paid from LCF.

2187. No basis has been suggested on which Mr Sedgwick gave value for his receipts from GRP. Moreover, for the reasons already given, he has not shown that he was a BFP. In any event, I have found that Mr Sedgwick had knowledge of the fraudulent conduct of business of LCF at all material times. He was therefore on notice that the sums he was receiving were derived from such fraudulent trading. He has therefore failed to establish the BFP defence.

2188. In addition, Green Electricity (formerly known as Leisure and Tourism Limited) paid a total of £32,733.50 to Mr Sedgwick between 8 August 2019 and 30 July 2020.

2189. As explained above in relation to Mr Golding, Green Electricity had been funded by LCF. LCF had paid Green Electricity £1,739,155 directly by the time that Green Electricity began making onward payments to Mr Sedgwick.

2190. No basis has been suggested on which Mr Sedgwick gave value for his receipts from Green Electricity. Moreover, he has not shown that he was a BFP.

2191. In addition, LCCL paid a total of £191,114.35 to Mr Sedgwick between 13 March 2015 and 2 December 2016.

2192. As explained above in relation to Mr Golding, part way through this period, from 28 August 2015 onwards, LCCL was being funded by L&TD. Between 28 August 2015 and 2 December 2016, L&TD paid to LCCL the net sum of £3,516,024.82.

2193. As also explained above in relation to Mr Golding, those payments were funded by LCF: based on available bank statements, LCF funded L&TD during this period.

2194. For reasons already given, LCCL was on notice that sums had been paid out of LCF and was on notice of impropriety.

2195. No basis has been suggested on which Mr Sedgwick gave value for his receipts from LCCL. Moreover, he has not shown that he was not a BFP.

2196. In addition, London Group LLP paid a total of £26,688.69 to Mr Sedgwick between 20 December 2017 and 1 May 2018.

2197. As explained above in relation to Mr Golding, the sums paid to London Group LLP before and during this period were funded by sums paid from LCF.

2198. No basis has been suggested on which Mr Sedgwick gave value for his receipts from London Group LLP. Moreover, he has not shown that he was a BFP.

2199. In addition, LOG paid a total of £103,215.75 to Mr Sedgwick between 7 June 2017 and 24 May 2018.

2200. As explained above in relation to Mr Golding, the sums paid to LOG before and during this period were funded by sums paid from LCF. LOG was the connected borrower which received the largest share of sums originating from LCF.

2201. No basis has been suggested on which Mr Sedgwick gave value for his receipts from LOG. Moreover, he has not shown that he was a BFP.

2202. In addition, Sands Equity paid a total of £36,000 to Mr Sedgwick between 7 June 2017 and 9 August 2017.

2203. As explained above in relation to Mr Golding, the sums paid to Sands Equity before and during this period were funded by sums paid from LCF, principally through GRP.

2204. No basis has been suggested on which Mr Sedgwick gave value for his receipts from Sands Equity. Moreover, he has not shown that he was a BFP.

2205. In addition, Waterside Escapes Limited paid a total of £7,809.99 to Mr Sedgwick between 24 February 2017 and 13 April 2022.

2206. I conclude that Waterside Escapes Limited was funded by throughout by LCF's property at all material times, for these reasons: (i) Waterside Escapes Limited was connected to Mr Hume-Kendall and Mr Thomson: Mr Hume-Kendall was a director between 26 May 2015 and 8 June 2015, and his wife, Mrs Hume-Kendall, was a director from 26 May 2015 onwards; (ii) Mr Hume-Kendall received very substantial sums which originated from LCF by 2017, set out above, and was on notice that those sums had been paid in breach of fiduciary duty; and (iii) Waterside Escapes Limited funded by Green Electricity (in turn funded by LCF) by at least 9 September 2019, and from that date until 16 July 2020, Green Electricity paid Waterside Escapes Limited the gross sum of £76,018.09. It is therefore likely that, by February 2017, Waterside Escapes was also being funded by LCF.

2207. No basis has been suggested on which Mr Sedgwick gave value for his receipts from Waterside Escapes Limited. Moreover, he has not shown that he was a BFP.

2208. Given the depth and breadth of his involvement in the companies associated with Mr Hume-Kendall and Mr Golding, I conclude that Mr Sedgwick knew that the sums he was receiving from these various companies (as in the case of Countrywide) derived from LCF.

2209. For these reasons, I find that LCF has established an equitable proprietary claim against Mr Sedgwick in respect of the amounts received by him as listed above, totalling £779,634.11, subject to a possible qualification. This is in respect of the payments by LCCL to Mr Sedgwick. The Claimants have established a case that LCCL was being funded by LCF in respect of the period after 28 August 2015, via L&TD. I invite further submissions about appropriate declarations, accounts and inquires, including in relation to this element of the claims concerning the period before 28 August 2015.

Knowing receipt claims

2210. To the extent that LCF's property, or the traceable proceeds thereof, is no longer in the hands of any of Mr Careless, Surge, Mr Russell-Murphy, GP or Mr Sedgwick (against which, as found above, it has equitable proprietary claims), the Claimants seek equitable compensation for knowing receipt in an amount equal to the value of the dissipated property.

2211. The Claimants also assert alternative claims against Mr Golding in the event that he did not himself owe fiduciary duties to LCF.

2212. There was one area of disagreement about the principles. Counsel for the Surge Defendants made the same contention in relation to these claims as for the equitable proprietary claims, namely, that a claimant may not bring such a claim where receipts have been made under a contract which the claimant has not applied to set aside. I reject that submission for the reasons given above.

2213. There was otherwise no disagreement about the relevant principles. A recipient of property transferred from a company in breach of the directors' fiduciary duty will be personally liable if it would be unconscionable for the recipient to retain the benefit of the receipt: see *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437, 455. That test has been criticised by the Supreme Court in obiter passages in *Byers* as unduly flexible and imprecise, but no other test has yet been formulated and it remains binding on this court. But, on any view, receipt from a company with actual or blind-eye knowledge that it derives from the fraudulent conduct of the company's business by the directors will satisfy the test for knowing receipt.

2214. I turn to the claims against each relevant Defendant.

2215. As set out above, I have found that Mr Careless received a minimum amount of £8,386,806.73 of LCF's property or its traceable proceeds and that Surge received £61,025,702.18 of LCF's property or its traceable proceeds.

2216. I have found that from the end of July 2015, Mr Careless had actual or blind-eye knowledge of conduct constituting breaches of the duties owed to LCF by Mr Thomson and/or Mr Golding. Mr Careless's knowledge is to be attributed to Surge. I find on this basis that Mr Careless and Surge are liable in knowing receipt.

2217. I have found above that Mr Russell-Murphy received a minimum amount of £351,598.06 of LCF's property or its traceable proceeds and that GP received £2,325,281.81 of LCF's property or its traceable proceeds.

2218. I have found that from the end of July 2015, Mr Russell-Murphy had actual or blind-eye knowledge of conduct constituting breaches of the duties owed to LCF by Mr Thomson and/or Mr Golding. Mr Russell-Murphy's knowledge is to be attributed to GP. I therefore find that they are liable in knowing receipt.

2219. I have found above that Mr Sedgwick received a minimum amount of £779,634.11 of LCF's property or its traceable proceeds.

2220. I have found that at all material times Mr Sedgwick had actual or blind-eye knowledge of conduct constituting breaches of the duties owed to LCF by Mr Thomson and/or Mr Golding. I therefore find that he is liable in knowing receipt.

2221. I have found that Mr Golding owed fiduciary duties to LCF. But, in case that is wrong, I find that Mr Golding was a knowing recipient of £43,428,758.50 of LCF's assets or their traceable proceeds. Mr Golding had actual knowledge or blind-eye knowledge at the material times (namely when he received those amounts) of the facts constituting breaches of the duties owed to LCF by Mr Thomson as set out above.

Dishonest assistance

2222. The Claimants assert that Mr Careless, Mr Russell-Murphy and Mr Sedgwick dishonestly assisted Mr Thomson and/or Mr Golding in breaching the fiduciary duties they owed to LCF; in the alternative that if Mr Golding did not owe fiduciary duties to LCF, then he dishonestly assisted Mr Thomson in breaching the fiduciary duties Mr Thomson owed to LCF.

2223. There was no disagreement about the law. In summary:

i. The requirements of dishonest assistance are a breach of fiduciary duty; assistance in that breach of fiduciary duty; and dishonesty.

ii. For assistance to be established, it is necessary to demonstrate that the defendant's conduct assisted in the breach of fiduciary duty, and the assistance given was more than minimal. While the loss suffered must be caused by the breach of fiduciary duty, it is not necessary to establish a direct link between the assistance and the loss.

iii. Liability for dishonest assistance is not limited to those persons who assist in the original breach of fiduciary duty; it also applies to those who consciously assist in the continuing diversion of property (including by seeking to conceal the original diversion of assets in breach of duty).

iv. The required mental element is dishonesty. It is not necessary for the defendant to suspect that the transaction amounts to a breach of trust or fiduciary duty, or to know of the existence of the trust or fiduciary duty.

v. The question of dishonesty requires ascertaining the actual state of the individual's knowledge or belief as to the facts; and whether the individual's state of mind is objectively dishonest by the standards of ordinary decent people. For this purpose, blind-eye knowledge is to be equated with actual knowledge.

2224. On the basis of the detailed findings of fact set out above, I find that Mr Careless assisted Mr Thomson and Mr Golding in breaches of duty by raising funds for LCF through the use of false representations, which funds Mr Thomson, Mr Golding and others misappropriated. Mr Careless's participation in the fraudulent scheme carried on by LCF is described in detail above. I have found that from the end of July 2015, Mr Careless had actual or blind-eye knowledge of the fraudulent scheme carried on by LCF. His conduct was therefore objectively dishonest from that date.

2225. On the basis of the detailed findings of fact set out above, I find that Mr Russell-Murphy assisted Mr Thomson and Mr Golding in breaches of duty by raising funds for LCF through the use of false representations, which funds Mr Thomson, Mr Golding and others misappropriated. Mr Russell-Murphy's participation in the fraudulent scheme

carried on by LCF is described in detail above. I have found that from the end of July 2015 Mr Russell-Murphy had actual or blind-eye knowledge of the fraudulent scheme carried on by LCF. His conduct was therefore objectively dishonest from that date.

2226. On the basis of the detailed findings of fact set out above, I find that Mr Sedgwick assisted Mr Thomson and Mr Golding in breaches of duty by drafting (and, in some cases, backdating) documents to conceal the misappropriation LCF's assets by Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. Mr Sedgwick's participation in the fraudulent scheme carried on by LCF is described in detail above. I have found that at all material times Mr Sedgwick had actual or blind-eye knowledge of the fraudulent scheme carried on by LCF. His conduct was therefore objectively dishonest throughout.

2227. Mr Golding owed fiduciary duties to LCF. In case this is wrong:

i. The assistance that Mr Careless, Surge, Mr Russell-Murphy and Mr Sedgwick each gave to Mr Thomson in the respects identified above was sufficient to render them liable to LCF for dishonest assistance.

ii. On the basis of the detailed findings of fact set out above, I find that Mr Golding assisted Mr Thomson in breaches of duty. Mr Golding was the ultimate architect of LCF's fund-raising scheme, and he provided assistance in numerous ways, including engaging Surge and causing companies which Mr Golding beneficially owned and controlled via Mr Barker to be used to facilitate and conceal the misappropriation of LCF's assets by himself, Mr Thomson, Mr Hume-Kendall, Mr Barker and others. Mr Golding's participation in the fraudulent scheme carried on by LCF is described in detail above. I have found that at all material times Mr Golding had actual or blind-eye knowledge of the fraudulent scheme carried on by LCF. His conduct was therefore objectively dishonest throughout.

2228. It follows that Mr Careless, Mr Russell-Murphy and Mr Sedgwick are liable for dishonest assistance in the breaches of duty by Mr Thomson and/or Mr Golding. If Mr Golding were not liable for breach of fiduciary duty, he would nonetheless be liable for dishonest assistance in the breaches of Mr Thomson.

Personal claims: Quantum

2229. The Defendants are therefore personally liable in various respects for participation in fraudulent trading; breach of fiduciary duty; knowing receipt; and dishonest assistance.

Fraudulent trading

2230. There was no difference between the parties about the legal principles.

2231. Where knowing participation in FCOB is established, by subsection 246Z(2) (and subsection 213(2)) the court may declare that persons who were knowingly party to the carrying on the business in the manner mentioned in subsection (1) are liable to make such contributions (if any) to the company's assets as the court thinks proper.

2232. There must be a nexus between the loss caused to the company's creditors by the fraudulent trading and the contribution ordered. Where there is more than one defendant,

the court may consider each defendant separately or hold them liable on a joint and several basis.

2233. The Claimants contend that each of Mr Thomson, Mr Golding, Mr Careless, Surge, Mr Russell-Murphy and Mr Sedgwick played critical roles in the fraudulent scheme carried on by LCF. Without Mr Thomson and Mr Golding, there would have been no scheme and no misappropriations of LCF's assets. Without Mr Careless, Surge and Mr Russell-Murphy, LCF would not have raised anything and so no misappropriations could have occurred. Without Mr Sedgwick, the conduct and concealment of the fraudulent trading would have been much more difficult or even impossible to implement without discovery.

2234. The Claimants contend that Mr Thomson, Mr Golding, Mr Careless, Surge, Mr Russell-Murphy and Mr Sedgwick should be jointly and severally liable for the entirety of the net deficiency in LCF's administration estate plus interest as it accrues, and the Claimants seek a money judgment in this amount.

2235. The Claimants accept that they would have to give credit against this sum for: any sums recovered from the Defendants in relation to their proprietary claims; and any sums arising from realisations of other assets within the administration estate.

2236. The net deficiency in LCF's estate is the amount required to pay all outstanding sums due to its creditors. It comprises the costs and expenses of the administration, which are payable before any sums due to creditors, principal due to creditors and interest due to creditors. LCF's creditors comprise its bondholders and the Financial Services Compensation Scheme ("FSCS"), to which certain of the bondholder claims are subrogated by reason of the FSCS having paid compensation to those bondholders in a sum of c. £172 million.

2237. Ms Lloyd has filed witness statements setting out LCF's net deficit. As at 22 May 2024, the net deficit in LCF's administration estate stood at over £379 million.

2238. There was very limited argument about quantum at the trial. I heard no submissions about whether it would be appropriate to make an order which included the costs of the administration (which would include the costs of the present proceedings) and interest (whether accruing before or after the administration of LCF). Counsel for some of the Defendants invited me to consider any issues of quantum after I had reached decisions on liability as it would allow more focused submissions.

2239. I have concluded that the court would be assisted by further submissions about the appropriate contribution to be made by the relevant Defendants.

Equitable compensation / damages for breach of duty

2240. There was no difference between the parties about the principles.

2241. While common law principles of remoteness, mitigation and causation do not apply to compensation for breach of fiduciary duty, there must be some causal connection between the breach and the loss suffered.

2242. The principles to be applied to the assessment of quantum of equitable compensation were described by Lord Reed in *AIB Group (UK) Plc v Mark Redler* [2015] AC 1503 at [133]-[136]: where the breach concerns the misapplication of trust property, the model of equitable compensation is to require the trustee to restore the fund to the position it would have been in had the trustee performed his obligation. The measure of compensation should normally be assessed at the date of trial with the benefit of hindsight. The foreseeability of loss is generally irrelevant, but the loss must flow from the breach of trust.

2243. The Claimants again contended that Mr Thomson and Mr Golding should be jointly and severally liable to pay equitable compensation in an amount equal to the net deficit in the LCF administration estate plus interest as it accrues. The Claimants would give credit against this sum for: any sums recovered from the Defendants in relation to their proprietary claims; and any sums arising from realisations of other assets within the administration estate.

2244. For similar reasons to those given in relation to the quantum of the contribution for fraudulent trading, I have concluded that the court would be assisted by further submissions about the measure of compensation.

Equitable compensation for dishonest assistance

2245. Again, the principles were not contested. A person who dishonestly assists in a breach of fiduciary duty will be liable for all losses which flow from the breach of duty in which they assisted.

2246. The Claimants contended that each of Mr Careless, Surge, Mr Russell-Murphy and Mr Sedgwick (under the alternative claim, Mr Golding) should be made jointly and severally liable to make LCF whole and so should be ordered to pay an amount equal to the net deficit in LCF's estate less interest. As above, the Claimants would give credit against this sum for any sums recovered from the Defendants in relation to their proprietary claims; and (ii) any sums arising from realisations of other assets within the administration estate.

2247. For the same reasons as given above, I invite further submissions about quantum after the delivery of this judgment.

Conclusions

2248. Mr Thomson, Mr Golding, Mr Careless, Surge, Mr Russell-Murphy, GP, and Mr Sedgwick are liable to LCF for knowing participation in the fraudulent conduct of LCF's business, as detailed above.

2249. Mr Thomson and Mr Golding are liable for breach of duties owed to LCF, as detailed above.

2250. Mr Thomson and Mr Golding are liable as constructive trustees of the benefits derived by them from their breaches of duty, as detailed above.

2251. LCF has established equitable proprietary claims against Mr Thomson, Mr Golding, Mr Careless, Surge, Mr Russell-Murphy, GP, and Mr Sedgwick, as detailed above.

2252. Mr Careless, Surge, Mr Russell-Murphy, GP and Mr Sedgwick are liable to LCF as constructive trustees in respect of assets received by them and deriving directly or indirectly from LCF, as detailed above.

2253. Mr Careless, Mr Russell-Murphy and Mr Sedgwick are liable to LCF for dishonest assistance in breaches of duty by Mr Thomson and/or Mr Golding, as detailed above.

2254. The terms of any declarations, accounts and inquiries and the quantum of the personal claims will be determined after further submissions.