
IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE
FINANCIAL MARKETS TRIBUNAL
Case: FMT 19007

B E T W E E N:

Al Masah Capital Limited
Al Masah Capital Management Limited
Shailesh Kumar Dash
Nrupaditya Singhdeo
Don Lim Jung Chiat

Applicants

- and -

The Dubai Financial Services Authority

Respondent

- before -

His Honour Mr David Mackie CBE QC (President)
Mr Ali Malek, QC
Mr Patrick Storey

Day 3

Tuesday, 12 May 2020

Mr Richard Hill, QC, and Mr Gregory Denton-Cox
(of 4 Stone Buildings), Mr DK Singh, Ms Bushra Ahmed and
Ms Tina Asgarian (of KBH Kaanuun) appeared on behalf of the
Applicants

Ms Sarah Clarke, QC, (of Serjeants' Inn) and Mr Adam Temple
(of 4 Pump Court) appeared on behalf of the Respondent

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1 PROCEEDINGS

2 (1.00 pm)

3 PRESIDENT: Good morning, everybody. Welcome back.

4 Is there anything that anyone wants to raise before
5 we continue with the evidence?

6 MS CLARKE: Yes, I do, sir, please.

7 I hope that you received an email early this morning
8 from Mr Lake informing you that Mr Hammond has prepared
9 a fifth witness statement and supplying a copy of it.
10 And that it had been provided to my learned friend
11 earlier this morning, to which they were asked to
12 respond whether they had any objections before
13 9 o'clock. So we heard nothing and we have therefore
14 forwarded it to you.

15 I can explain the reason for it or it may be
16 self-evident on the face of the statement.

17 PRESIDENT: Can I say that I got -- I don't know about my
18 colleagues, but I certainly got the email, but for
19 obvious reasons, I didn't read the witness statement.

20 MS CLARKE: I understand.

21 PRESIDENT: Because we don't know whether or not there's an
22 issue about it.

23 MS CLARKE: No.

24 PRESIDENT: It may be more convenient to deal with this once
25 Ms Baines' evidence is over?

1 13:01 MS CLARKE: Yes, in fact Ms Baines should probably retire
2 for this part or turn off her --

3 PRESIDENT: Alternatively, shall we deal with it when she's
4 finished?

5 MS CLARKE: Yes. In fact, that may be more sensible,
6 absolutely.

7 PRESIDENT: We will deal with that issue, if it becomes an
8 issue, once Ms Baines' evidence is finished.

9 Is there anything else to raise at this point?

10 MS CLARKE: No, other than that.

11 PRESIDENT: I'm going to raise one point myself, however,
12 which is this. It's a point arising or actually rather
13 not arising from the transcript. I see that at 2.54
14 yesterday, Mr Hill asked if it was a convenient moment
15 to break. Mr Ali says it was and then there was
16 a break. The transcript tactfully omits the pause,
17 which occurred when I did not reply.

18 Given the usual impression that gives, particularly
19 in a hearing when we're not altogether as we would
20 normally be, and because I have the technology to
21 demonstrate it, and finally, because this sort of thing
22 used to enrage me when I was in practice, I just should
23 explain that pause.

24 At about 14.35, English time yesterday, I reached
25 for my phone, in order to send a WhatsApp message to my

1 13:02 colleagues about the timing of the break. I then saw
2 that there was an email in from DFSA, which I thought
3 I should check. I checked it and actually it was an
4 email to all subscribers, but it was relevant, because
5 it was the release of the publicity release, which had
6 been the subject of our discussion and decision, and
7 I thought I better check it.

8 At 2.39, I sent a WhatsApp message to my colleagues
9 to that effect, stating that the thing was now up on the
10 website. I then started to check the publicity release
11 and also the website for the January decision, and
12 I became too engrossed about that at 2.54 or 2.53 and
13 didn't pay attention to Mr Hill.

14 I'm sorry for that inattention, but bearing in mind
15 my own reaction when I was in practice, I thought the
16 parties were entitled to an explanation. Having given
17 it, we will now resume with Ms Baines. Thank you.

18 MS HELEN BAINES

19 Cross-examination by MR HILL (continued)

20 MR HILL: Ms Baines, could I ask you to be shown exhibit
21 R004 in tab 2 of that exhibit.

22 If Fatima could go to page 21 of the tab there, it's
23 the regulatory business plan for 2013.

24 MR MALEK: Can you give me that reference again so I can
25 look at the electronic bundle.

1 13:04 MR HILL: Yes, R004, tab 2, and within that tab are two
2 versions of the regulatory business plan. It starts at
3 the 2010 version and at page 21 of the tab is the 2013
4 version, which is what I'm looking at.

5 MR MALEK: Which bundle is that?

6 MR HILL: All in bundle D, yes.

7 If you just scroll down a little, Fatima, so
8 Ms Baines can see it.

9 That's the November 2013 version of the regulatory
10 business plan which you're familiar with, Ms Baines;
11 yes?

12 A. Yes, that's correct.

13 Q. You were involved in preparing it, weren't you?

14 A. To the best of my knowledge, yes, I was.

15 Q. We have an email from you that confirms that. I'm not
16 going to take you to it.

17 You must have taken a view that this fairly
18 summarised the structure and operations of the business;
19 yes?

20 A. As far as I'm aware, what is in that business plan is
21 what I was aware of.

22 Q. Can we go to page 5 of the document, internal page.

23 If you just read the first two paragraphs:

24 "As noted above, the principal business activity of
25 AMCML is that of the asset management and investment

1 13:06 fund and structures which have been launched in the
2 future by the holding company or such entities, which
3 includes private equity funds, alternative investment
4 and real estate funds. The investment funds/structures
5 are predominantly domiciled in the Cayman Islands and
6 Luxemburg.

7 AMCML supports the other Al Masah Group companies
8 management and advisory services related to the
9 following:

10 -- Private equity structures and investment funds,
11 although it must be stressed that with regards to the
12 private equity funds, there is no direct relationship
13 with AMCML."

14 It goes on to list platforms below that as well as
15 the actual funds; yes?

16 A. That's correct.

17 Q. As you understood it, and as you explain there, Al Masah
18 DIFC was providing asset management structures which
19 were being launched by Al Masah Cayman in the Cayman and
20 elsewhere; yes?

21 A. Al Masah Capital Management Ltd would provide the -- you
22 know, the advisory and the management services that it
23 would be requested to do so.

24 Q. Yes, and if you look at the first paragraph, asset
25 management is provided?

1 13:07 A. That was a permitted activity of Al Masah Capital
2 Management Ltd, yes.

3 Q. You're making the point in the second paragraph, there's
4 no direct relationship between Al Masah Capital
5 Management and the private equity structure; yes?

6 A. That's the point being made, yes.

7 Q. If you then go on two pages in this document, we have
8 there, that's still in the same section -- pausing
9 there, Fatima -- you say:

10 "Additionally, AMCML will engage with investment
11 advisers and conduct marketing distribution activities
12 as set out by DFSA regulations. The information is only
13 to be made available to high net worth individuals and
14 institutional investors. In this respect, AMCML is not
15 in the business of clearing or taking funds directly,
16 but will limit its activities to making introductions,
17 answering questions and conducting inquiries. AMCML
18 also provides investment and corporate advisory
19 services."

20 So there the description of marketing and
21 distribution activities was intended to include the
22 generation of leads we talked about yesterday, by the
23 investor relations team in your offices; yes?

24 A. Sorry, to generate what?

25 Q. That marketing and distribution activity that you're

1 13:09 talking about there, that's intended to capture, isn't
2 it, the generation of leads by the investor relations
3 team in your offices?

4 A. I mean, this was a long time ago. I can't recollect
5 that.

6 Q. We looked at this yesterday. The marketing and
7 distribution activities that Al Masah Capital Management
8 were carrying on, we looked at this yesterday. Those
9 are the marketing and distribution activities of the
10 investor relations team. They were the people who were
11 doing it, aren't they? Placement teams, call them
12 investor relations team.

13 A. That would have been the team in Al Masah Capital
14 Management Ltd that would do that --

15 Q. Sorry, I didn't mean to talk across you. Their
16 marketing and distribution activities, some of the main
17 ones related to the private equity structures?

18 A. I can't comment on that. My limited knowledge, it could
19 be others as well. It might not be just limited to
20 those.

21 Q. Yes. Sorry, I wasn't suggesting it's limited to that,
22 but it included that.

23 A. It would include those, yes.

24 Q. Can we look at section 2.4 of this document. You deal
25 there in a little more detail with investor relations

1 13:10 management. If you look at the first paragraph:

2 "AMCML ... investment funds to be launched by the
3 holding company, undertaking investment management and
4 ancillary services."

5 Then it makes the point in the next paragraph:

6 "AMCML intends to target high net worth individuals.
7 All clients are classified as professional or market
8 counterparty ..."

9 Then underneath that:

10 "AMCML has an extensive network of relationships
11 with high network individuals, institutional investors
12 in the MENA region, which can be utilised when
13 undertaking marketing distribution activities for the
14 investment funds that AMCML manages.

15 Business development sales and investor relations,
16 identify potential clients, answer queries and forward
17 direct enquiries to the appropriate business function.
18 AMCML will conduct marketing activities as set out by
19 the rules of the DFSA.

20 Once a prospective investor is determined to be
21 suitable, AMCML will hold a preliminary discussion about
22 selected investment funds and facilitate any request for
23 more information. After the prospective investor has
24 received the information, AMCML will follow up with and
25 stay accessible to the investor to help answer questions

1 13:12 until an investment decision has been made during the
2 lifetime of their investment to ensure that investors
3 are kept properly informed."

4 This again is describing the activities of the
5 investor relations team, isn't it?

6 A. I mean, the date of that document, that would be my
7 understanding of what, you know, what was going on.

8 Q. Including how they would be marketing to -- marketing
9 the private equity structures?

10 A. Sorry, how they would be marketing to what?

11 Q. Including what they would be doing when they market the
12 private equity structures. I'm not saying limited to
13 private equity structures, but including the private
14 equity structure.

15 A. Yes, that would be correct. That would be my
16 understanding.

17 Q. You understood that all these services being offered by
18 Al Masah DIFC, Al Masah Capital Management, fell within
19 the scope of its licence; yes?

20 A. Within the scope of the licence, yes, at the time of
21 that report.

22 Q. You're explaining what these activities are to the DFSA,
23 so that the DFSA can see what they are and see that they
24 correspond to the licences?

25 A. Sorry, say that again.

1 13:13 Q. I'm going to move a little closer. You're explaining
2 what these activities are to the DFSA, so that the DFSA
3 can see and understand them from your regulatory
4 business plan to see for itself that you are conducting
5 activities within the scope of your licence?

6 A. This is not my regulatory business plan. This is the
7 company's regulatory business plan that is contributed
8 not just by me, but you know, other contributors. So it
9 does give -- you know, the idea is for it to give an
10 overview to the DFSA of what is going on. It's not my
11 report.

12 Q. But you have approved it and you worked on it; correct?

13 A. I worked on it and I contributed to it, and then it
14 would have been approved by the senior management before
15 it was issued.

16 Q. It would be fair to say that at all times, from your
17 perspective, you communicated honestly, openly and
18 candidly to the DFSA; yes?

19 A. The content of the report is what I believed to be
20 correct at the time.

21 Q. I'm not just talking about the report. At all times,
22 from your perspective, you communicated honestly, openly
23 and candidly to the DFSA?

24 A. I believe that to be true, yes.

25 Q. Mr Dash and others in senior management were happy,

1 13:14 weren't they, to let you get on with dealing with the
2 DFSA; correct?

3 A. I can't comment on that. I can't comment on that.

4 Q. They didn't impede your communications with the DFSA,
5 did they?

6 A. We would have discussed the communications.

7 Q. They were happy for you to deal directly with the DFSA,
8 weren't they?

9 A. I was allowed to deal directly with the DFSA, but I also
10 had to talk to the senior management as well.

11 Q. Can we go to bundle C016 at SKD 4-12.

12 This is an email from you to Mr Dash and
13 Mr Singhdeo. Just scroll down a little. Keep going,
14 Fatima.

15 Just stop there, Fatima.

16 This is what I'm going to suggest is an email that's
17 perhaps typical of how you would interact with
18 management in dealing with the DFSA. You can see that
19 in this email, you're notifying to Mr Dash and
20 Mr Singhdeo that there's an upcoming meeting with the
21 DFSA at 3 pm.

22 Then if you scroll up, Fatima.

23 You see Mr Dash says:

24 "I think you and NS have to handle as I have
25 a doctor appointment [at] 3.30 pm!"

1 13:17 Then can we scroll up. Then you asked:
2 "Do you want me to try to move the DFSA meeting ..."
3 Then scroll up. Then Mr Dash says:
4 "No, me and NS have a lunch meeting ... I would have
5 preferred in the morning though. Anyways now
6 [Mr Singhdeo] will accompany you."

7 From this email string, you can see that Mr Dash is
8 happy to leave it to you and Mr Singhdeo to have the
9 meeting, as he had another engagement; yes?

10 A. That email, yes, said that he was happy for me to attend
11 with Mr Singhdeo, but it shows you that -- the email
12 shows you clearly, in my view, that I would not attend
13 any meetings or communications with the DFSA without
14 raising it and discussing it with the senior management
15 first.

16 Q. But you did, in fact, have regular communications with
17 the DFSA directly without senior management?

18 A. Sorry?

19 Q. You did, in fact, have regular communications with the
20 DFSA directly without senior management?

21 A. I had regular communications with the DFSA when I had
22 a query on something or, you know, a communication came
23 through from the DFSA, but I would always raise it and
24 discuss it with senior management.

25 Q. The DFSA conducted reviews of the business from time to

1 13:18 time, didn't they?

2 A. They did risk assessments.

3 Q. As far as you could see, they understood the workings of
4 the business; yes?

5 A. I can't comment on that.

6 Q. For example, as far as you could see, they understood
7 the private equity structures domiciled in Cayman; yes?

8 A. If there was any queries, they would ask me, but I can't
9 comment, I can't speak for the DFSA. I can't comment on
10 that.

11 Q. We know, we're about to come to some documents, we know
12 you had meeting with the DFSA at which you discussed the
13 business. So you must have formed your own view and
14 understanding of what they knew about the business,
15 because you were discussing it with them. I'm asking
16 you about that, about your recollection.

17 A. Sorry, I don't understand what you're trying to get at
18 here.

19 Q. I'm just trying to capture your recollection of how you
20 saw the DFSA's understanding of the business. You must
21 have had a perception of that, because you were involved
22 in meetings with them, which with them you discussed the
23 business. So I'm asking you, as far as you could see,
24 they understood, for example, that there were private
25 equity structures domiciled in the Caymans; yes?

1 13:20 A. They did their risk assessments. They were provided --
2 the DFSA were provided with the information as requested
3 by myself when they were requested. I cannot say
4 that -- I cannot speak for the DFSA and say what their
5 understanding is.

6 Q. You were at meetings with them and you had discussed the
7 business. You must have formed a view of whether they
8 were intelligently discussing the business and seemed to
9 understand what it was you were talking about?

10 A. I would have asked them -- I would have answered the
11 questions that they raised.

12 Q. Come on, Ms Baines. This is not a very difficult
13 question. You were at meetings with the DFSA at which
14 you discussed the business. Did they appear to
15 understand elements of the business such that there were
16 private equity structures domiciled in Cayman?

17 A. I'm sorry. I can't form that view, no. I can't form
18 that view. I gave them the information that they
19 wanted, I answered all of their questions.

20 Q. There were, for example, investor relations teams
21 operating in the DIFC. The DFSA understood that point,
22 as far as you could tell, from the discussions; yes?

23 A. During the risk -- to the best of my recollection,
24 during the risk assessment visits, the onsite visits and
25 reviews that would have been done by the DFSA, they

1 13:21 would have talked to me, they would have talked to the
2 senior management and they would have visited the
3 offices. I cannot put an opinion or a view of what
4 I think that they formed on those visits or on those
5 risk assessments.

6 Q. They were provided with marketing material, weren't
7 they; yes?

8 A. They would have been provided with all of the
9 documentation that they requested as part of their
10 oversight and supervision of the company.

11 Q. But you actually recall, don't you, that they were
12 provided with marketing material?

13 A. I recall that on the risk assessments that would have
14 been carried out, they sent over lists of documents and
15 information and those requirements would have been met.
16 I cannot now recall specifically which documents were
17 sent.

18 Q. Can we look at exhibit R004, tab 13.

19 This is an email to Mr Dash from the DFSA dealing
20 with an upcoming review assessment. If we just scroll
21 down a bit, Fatima.

22 Looking at the second and third paragraphs:

23 "As you are aware, periodic visits are undertaken at
24 frequencies determined by the DFSA and focus on the main
25 risk areas within an authorised firm as well as

1 13:23 providing the DFSA with a thorough understanding of the
2 authorised firm, its business and any major changes that
3 have taken place since the previous visit or risk
4 assessment and their probable effects.

5 The aim of the assessment is to get an overview of
6 the firm's business activities, staff, policies,
7 procedures and systems and controls in order to identify
8 and evaluate any risks of the DFSA's objectives.
9 Therefore and in accordance with DIFC legislation, we
10 will require access to all relevant employees, files and
11 documents."

12 So, on these reviews, the DFSA were obtaining an
13 overview of the firm's activities, getting access to all
14 the firm's files and documents; correct?

15 A. That would be my understanding of those paragraphs, yes.

16 Q. That's to the best of your recollection of what happened
17 being conducted; yes?

18 A. To the best of my recollection, the information that
19 they requested, the meetings that they wanted and the
20 visits that they wanted to do were all undertaken and
21 all supplied as requested by them.

22 Q. The company, following this review, received a clean
23 bill of health from the DFSA, didn't they?

24 A. I can't recall the exact wording of the findings letter
25 for the risk assessment. I can't recall that. That was

1 13:25 a while ago.

2 Q. If we go further on in this tab, Fatima, to page 7.

3 Just scrolling down a little bit further.

4 You can see there this is the DFSA's return
5 following this review. They say in their second
6 paragraph:

7 "There were no significant findings or regulatory
8 breaches arising from this risk assessment and so,
9 consequently, no risk mitigation programme is appended."

10 The company did receive a clean bill of health from
11 this assessment?

12 A. That is what that letter says to Mr Dash, yes.

13 Q. We were looking earlier at the compliance manual. Go
14 back to that, you'll find it at C010, SKD 3-11, page 81
15 in the tab. I'm going to ask Fatima to go straight on
16 in this document to page 119 of the tab.

17 I'm going to focus on the bottom of the page. This
18 is section 8.2.4, which deals with marketing of foreign
19 funds. Do you see there, it says:

20 "Only the units of Funds that are reviewed and
21 approved by the Compliance officer can be marketed by
22 the Company in the DIFC. The Compliance Officer will
23 check if all requirements are met by the fund."

24 Only foreign funds reviewed and approved by you were
25 to be marketed by the company in the DIFC; yes?

1 13:27 A. This is a compliance -- this is a compliance manual,
2 I see from the front page, dated 2013. So it was
3 subsequently updated, as I mentioned in my witness
4 statement, in May 2016. So at that time, in 2013, that
5 would have been the policy.

6 Q. That's right. Just to be clear, this is the 2013
7 version that you had updated; yes?

8 A. I did do some updates to the 2013 version, after I'd
9 joined Al Masah Capital Management Ltd, yes.

10 Q. Staying in this section 8.2.4, going on to the next
11 page, Fatima, this is a paragraph that deals with
12 various requirements for foreign fund marketing. The
13 bottom paragraph deals with the various sign-off
14 processes involving you. Do you see all that?

15 A. Yes.

16 Q. It was your responsibility, wasn't it, to identify which
17 of the company's activities might constitute the
18 marketing of a foreign fund?

19 A. In what way do you mean by that? Which of the company's
20 activities?

21 Q. It was your job, if anything the company was doing
22 amounted to marketing a foreign fund, then it was your
23 job to identify that and make sure that there was
24 compliance with the procedures set out in this
25 paragraph?

1 13:29 A. The marketing documentation would have had to follow the
2 procedures set out in this manual, yes.

3 Q. The company is engaged in marketing various structures
4 of various kinds. Someone needs to determine whether
5 any of these amount to foreign funds in the meaning of
6 the legislation. That someone is going to be you or you
7 need to at least check that; correct?

8 A. I would check it from the regulations and also look at,
9 you know, whether it would be a foreign fund. I would
10 check it in accordance with the policy that we had in
11 place.

12 Q. Yes, thank you. That's just what I was establishing.

13 It's right to say that you took the view at the time
14 that the private equity platforms did not constitute
15 foreign funds that had been marketed?

16 A. I can't remember the view. It was a long time ago.
17 I would have done an assessment based on the rules of
18 the -- the DFSA rules at that time.

19 Q. But the outcome of that assessment, we can see this from
20 other documents, is that you did conclude that the
21 private equity structures did not classify as foreign
22 funds that the company was marketing?

23 A. I can't remember that.

24 Q. We'll come onto it, because we can see this through some
25 documents.

1 13:30 Can we look at C016, SKD 4-11.

2 This is a notification by you -- Fatima, just scroll
3 down a little bit, so Ms Baines can see her own email.

4 This is a notification by you to Mr Turner of the
5 DFSA of Al Masah Capital Management Ltd's appointment as
6 investment manager of a new IPO fund. Do you recall
7 that?

8 A. I do vaguely have limited knowledge of it.

9 Q. You're providing the DFSA with the prospectus and other
10 fund documents; yes?

11 A. That's what that email says, yes.

12 Q. What this is showing is your process, when you regard
13 there as being a fund, which amounts to a fund within
14 the meaning of the fund legislation of the collective
15 investment law and you're submitting a notification to
16 the DFSA; yes?

17 A. At that time of that email, I would have followed the
18 DFSA regulations and notified the DFSA of the launch of
19 a new fund.

20 Q. Can we now go to C016 SKD 4-20.

21 Fatima, the detailed reference is 20140529. It's
22 called, "Email Annual Notification".

23 You're saying:

24 "Dear David,

25 Please find attached the annual Notification of the

1 13:33 Marketing and selling of Funds, for Al Masah Capital
2 Management Limited, in compliance with DFSA CIR Rule
3 15.1.10."

4 Do you recall you had to give annual notification of
5 the funds that were being marketed and sold for the
6 purposes of the Collective Investment Rules?

7 A. I do recall doing the compliance for the annual
8 submission, yes.

9 Q. Can we see, look at the attachment of this, which we
10 will find in the same tab at 20140529. It's entitled,
11 "Attachment Email". This is the form and you see the
12 title:

13 "Form CIR

14 Notification of the marketing and selling of Funds."

15 If we scroll down, then just looking at the purpose
16 of the form, you can just remind yourself of the
17 purpose. I'm not going to read it to you. You can read
18 it to yourself.

19 Can you see it covers marketing and selling both
20 foreign funds and of domestic and external funds? In
21 other words, all funds, both foreign and domestic,
22 within the meaning of the collective investment board
23 and the collective investment rules, if there was
24 marketing or selling, it needed to be notified; yes?

25 A. Yes, that's correct.

1 13:35 Q. Then if we scroll down. We see just at the bottom of
2 the page that you are the person who is the contact
3 person, you were the compiler of this form?

4 A. That's correct.

5 Q. If we scroll down, next page, we'll have to look at this
6 sideways. This is at section 2, which is dealing with
7 the marketing and selling of foreign funds. Do you see
8 that? On that page, you're identifying one fund which
9 is the Al Masah Capital Luxemburg fund; yes?

10 A. That's correct.

11 Q. Then if we scroll down, there's nothing else on the next
12 page, the next page just deals with criteria. Go to
13 page 6, the next page, nothing significant there. Go on
14 to the next page, nothing significant there.

15 Then the last page, just pausing there, again,
16 Fatima, would you be able to flip this sideways?

17 You'll see there's a section 3, which deals with
18 marketing and selling of domestic and external funds.
19 You identify one additional fund there, which is the
20 Al Masah Capital IPO fund. Do you see that?

21 A. I see that, yes.

22 Q. You are not identifying anywhere on this form any of the
23 private equity structures; correct?

24 A. The private equity structures are not shown on that
25 form.

1 13:37 Q. That is because you didn't regard those corporate
2 private equity structures at the time as being foreign
3 funds; correct?

4 A. I would have completed that form in accordance with the
5 guidelines for the completion of that form.

6 Q. That's not answering my question --

7 A. To the best of my knowledge.

8 Q. Of course. I'm not suggesting you're wrong in the
9 approach you took. That is consistent with our case.
10 Your view at the time was that the private equity
11 structures didn't amount to foreign funds. I'm
12 suggesting you're right about it, that that was your
13 view at the time.

14 A. I can't recollect that that was my view, but what I can
15 say is that the forms were very specific, they needed
16 information in specific boxes and I filled that form out
17 to the best of my ability.

18 Q. But it must have been your view. Can you give any other
19 explanation as to why you didn't mention the private
20 equity structures on this form for identifying the
21 marketing and selling of domestic and external funds?

22 A. I can't recollect that, to be honest with you.

23 Q. Can you try a little harder, Ms Baines. Can you think
24 of any reason other than the fact that you took the view
25 these were not foreign funds within the meaning of the

1 13:38 regulation?

2 A. I don't recollect that view at that time.

3 Q. What do you recollect about your reasons for not listing
4 the private equity structures on this form?

5 A. I cannot -- I honestly -- it was a long time ago and
6 I filled out the form to the best of my ability.

7 I cannot now recollect what I was thinking at that time.

8 Q. Shall we go to C016, SKD 4-13, 20140615? Also entitled:

9 "Notification of the marketing and selling of
10 Funds."

11 This is a 15 June email. And can I ask you to
12 scroll down. You see there you say in your email:

13 "Dear David & Christian,

14 Further to our discussions yesterday, please find
15 attached the amended Notification of the Marketing and
16 Selling of Fund (CIR) form. I apologise for the
17 confusion in this regard. If you have any further
18 queries with regard to this submission, please do not
19 hesitate to contact me."

20 You can see from that that you've had discussions
21 with the DFSA, which have led you to amending the
22 notification of foreign funds. Do you see that?

23 A. I do see that, yes.

24 Q. If you scroll up to the top, you can see that Mr Turner
25 responds saying:

1 13:40 "Many thanks for the amended doc. Thanks also for
2 coming in and giving us an update on the business."

3 You had a meeting with the DFSA and updated them on
4 the business; correct?

5 A. I don't recall that meeting, to be honest with you. It
6 was a long time ago.

7 Q. Well, you plainly have had a meeting, haven't you,
8 Ms Baines, because it has been discussed; yes?

9 A. Clearly it's there in the email, but I don't recall the
10 meeting itself.

11 Q. Given the two emails and that you're on the back of the
12 meeting providing an amended document, and you have also
13 been discussing with the DFSA the contents of the
14 document and how you should notify the marketing of
15 foreign funds; correct?

16 A. From the documents here, it shows from my limited
17 recollection, and it is limited recollection, because it
18 was a while ago, I've obviously submitted a form. Maybe
19 I put some information in the wrong column or whatever
20 or not put information in. There's been subsequent
21 queries and information flowing and then I have
22 re-submitted the form.

23 Q. If you go to C016, SKD 4-13, next document, which is
24 attached to the last email. So entitled, "DFSA Annual
25 Marketing of Funds."

1 13:42 This is your amended version which you attached to
2 the email we just saw.

3 If we just scroll through it, hopefully quite
4 quickly, we see what you have done in this amended
5 version.

6 Going down, you'll see this page, you're still --
7 under "Marketing and Selling of Foreign Funds", you're
8 still just notifying the Luxemburg fund.

9 If you scroll through the document, Fatima, just
10 pause there. Can you stop there. You'll see that you
11 are then now at page 5 of, I think, page 8 it was, thank
12 you -- sorry, Fatima, could you just scroll up, so I can
13 see the top of that page.

14 This is a slightly different version, because you're
15 now putting the Luxemburg fund in part B under "Other
16 Foreign Fund Criteria".

17 If you scroll down again, Fatima, section 3, you'll
18 see that the IPO fund, which you had previously notified
19 in section 3, you now, following your discussions with
20 DFSA, have deleted the IPO fund from the form. Can you
21 see that?

22 A. I do see that, yes.

23 Q. Still following your discussions with the DFSA, there is
24 still no listing of any of the private equity structures
25 in this form; correct?

1 13:44 A. That's correct.

2 Q. Again, that must have been because you took the view
3 that the private equity structures did not constitute
4 funds, foreign funds or any other type of funds, that
5 needed, under the collective investment rules, to be
6 listed; yes?

7 A. As I said before, I can't recollect what view I took.
8 I completed the form as per the requirements of the DFSA
9 and then I submitted the form.

10 Q. We have already discussed how your understanding was the
11 investment relations teams were marketing the private
12 equity structures. It's not a question of marketing.
13 You must have taken a view these were not foreign funds.
14 You can't think of any other reason?

15 A. I really can't recollect a view from that long ago.

16 Q. I'm not just asking you to recollect. You were and are
17 still an expert in this area. You can't identify any
18 other reason why you would have omitted mentioning the
19 private equity structure?

20 A. I can't make a comment on that.

21 Q. I'm asking you to make a comment on that, because you're
22 an expert in the area. I'm asking you, if you can
23 identify any other reason why you might have excluded
24 the private equity structures?

25 A. I would put in the form the funds that met the criteria

1 13:45 for disclosure.

2 Q. You didn't, at any stage, advise any of the Al Masah
3 management, any other members of management, that
4 private equity structures should have been classified as
5 foreign funds being marketed in or from the DIFC?

6 A. Sorry, repeat that, please?

7 Q. You didn't, at any stage, advise Al Masah management
8 that these private equity structures should have been
9 classified as foreign funds being marketed in or from
10 the DIFC?

11 A. I have no recollection of any of that kind of
12 discussion.

13 Q. You didn't, at any stage, suggest there was any
14 regulatory non-compliance arising from the Cayman
15 private equity structures having the status of foreign
16 funds?

17 A. I have no recollection of anything like that.

18 Q. You didn't consider there was any regulatory
19 non-compliance arising from the Cayman private equity
20 structures having the status of foreign funds?

21 A. I can't comment on that.

22 Q. I'll take that as a "no". Yes?

23 A. You know, the discussions were potentially a long time
24 ago. I really cannot recollect any of these things that
25 you're saying that I may or may not have done.

1 13:47 Q. Well, we can see what you thought in the forms that you
2 filed. We can see from your returns you didn't think
3 that these were foreign funds. And presumably, that's
4 your advice to management was in accordance with that;
5 correct?

6 A. I don't recollect giving any advice to management on
7 this type of thing. I would have simply filled the
8 forms out as per the requirements of the DFSA with the
9 applicable information that would be needed to be
10 disclosed on the forms.

11 Q. You did not think, did you, that Al Masah DIFC was in
12 breach in any way of the marketing provisions of the
13 Collective Investment Law -- Al Masah Capital
14 Management?

15 A. I can't comment on that. I can't say what I did or did
16 not think, you know, six years ago. I can't comment on
17 that now.

18 Q. If you had thought that, you would have done something
19 about it?

20 A. I do the compliance function to the best of my
21 knowledge. If I thought there was a problem, it would
22 have been raised to the senior management.

23 Q. You would have made sure that something was done about
24 it. Ultimately, if it was not corrected, raised it with
25 the DFSA?

1 13:48 A. I would have followed the compliance responsibilities
2 and obligations.

3 Q. If there was marketing happening by virtue of the
4 activities of the staff in the DIFC offices, let's
5 assume that what your DIFC staff are doing amounts to
6 marketing; it's right, isn't it, your view at the time
7 was, marketing was something being undertaken by
8 Al Masah Capital Management; yes?

9 A. Marketing, promotional and marketing activities would
10 have been or should have been undertaken only by
11 Al Masah Capital Management Ltd, as per the regulations
12 and the applicable licence.

13 Q. You thought that the marketing activities of the
14 investor relations team were the activities of Al Masah
15 Capital Management Ltd; correct?

16 A. The team were employed by Al Masah Capital
17 Management Ltd, so the activities are done by the staff
18 of Al Masah Capital Management Ltd.

19 Q. You didn't think that what they were doing amounted to
20 activities by someone else, by Al Masah Capital Cayman,
21 did you?

22 A. No, the activities of the staff would only -- should
23 only have been done for and on behalf of Al Masah
24 Capital Management Ltd. No other third party.

25 Q. Your view at the time was that was what was happening?

1 13:50 A. My recollection, based on -- at that time, was that was
2 what was happening.

3 Q. I'm going to move to a slightly different area. You'll
4 recall that Al Masah Capital Management Ltd had
5 a licence to be a fund manager; yes?

6 A. I recall what was -- if it was a fund management, it
7 would have been sitting on the Ajwa(?) licence from the
8 DFSA.

9 Q. Al Masah Capital Management Ltd could undertake fund
10 management activities in or from the DIFC within the
11 scope of its licence; yes?

12 A. I mean, at what point in time are you talking? Are you
13 talking now? Are you talking 2013? It would have been
14 whatever was on the licence.

15 Q. You didn't think, did you, that the way that the
16 Al Masah private equity business worked meant that
17 Al Masah Cayman -- Al Masah Capital, the Cayman company,
18 was managing a collective investment fund in or from the
19 DIFC without a licence?

20 A. I can't comment on that. All I would -- my
21 understanding of the people within the offices were that
22 they were the staff of Al Masah Capital Management Ltd.

23 Q. You didn't think that the structure that you were
24 observing and that you were covering in your compliance
25 manuals, you didn't think that the working of that meant

1 13:52 that Al Masah Capital Cayman was managing a fund in or
2 from the DIFC, breaching prohibition?

3 A. I have no real recollection of any worries or any doubts
4 in my mind, at that time, with regards to anything like
5 that.

6 Q. I'm going to move to a different area.

7 You recall that Al Masah DIFC, Al Masah Capital
8 Management Ltd, had the licence to arrange deals and
9 investments; yes?

10 A. Yes.

11 Q. Did you think that Al Masah Capital Management Ltd was
12 arranging deals in investments as a result of the
13 activities of the investor relations team with regard to
14 the private equity structures? In other words, the sort
15 of thing we talked about yesterday, distributing the
16 marketing material, talking to investors and so on?

17 A. My understanding is that they were doing the marketing
18 and the promotional work.

19 Q. What did you think about whether or not they were
20 arranging deals and investments?

21 A. My understanding was that their policies and procedures
22 said that, you know, in certain instances, where you are
23 undertaking a regulated activity, you have to on board
24 the clients. If the clients are not on-boarded, then
25 that regulated activity is not being undertaken, in my

1 13:54 view.

2 Q. Just to make sure I understand what you thought was
3 happening. You discussed what role you thought they
4 were taking with marketing and distribution and so on.
5 Did you think at the time that they were arranging deals
6 and investments?

7 A. My understanding was that they were doing the
8 promotional and the marketing activities of the funds
9 and they were -- I'm just checking my witness statement.
10 Hang on a minute.

11 They were doing the -- according to my witness
12 statement here is what I've said previously, is that
13 they were doing the promotional and the marketing and
14 they were responsible for generating the new
15 subscriptions into the funds and investment structures.

16 Q. I'm asking you on the back of that and you have given us
17 a little more elaboration on what you thought they were
18 doing yesterday. Now I'm asking you as a result of all
19 of that, did you think -- what was your view on whether
20 or not they were arranging deals and investments?

21 A. I can't recollect any of that at that time, that that's
22 what my -- as per the witness statement, that was the
23 responsibility of -- my view was the responsibility of
24 what they were doing.

25 Q. Sorry just repeat that answer. I'm not sure

1 13:55 I understood it. Say it again.

2 A. So as per the witness statement, they were responsible
3 for generating new subscriptions into the fund, as well
4 as into the PE funds, as well as other investment
5 structures. If they were doing any regulated
6 activities, advising and arranging, it was their
7 responsibility to start the on-boarding process.

8 If we have -- if they have not done the on-boarding
9 process, then they have to make that decision as to
10 whether they were doing regulated activity. I cannot
11 say what each and every person was doing at any minute
12 of the day.

13 Q. You knew the broad scope of their activities. We
14 discussed that already. You must have had a view at the
15 time as to whether these activities amounted to
16 arranging. You're the compliance officer, after all.

17 A. I can't recollect any particular view. It was a long
18 time ago.

19 Q. Just on that, if the investor relations teams'
20 activities did amount to arranging, that of course would
21 be arranging by Al Masah Capital Management Ltd, not by
22 anyone else; yes?

23 A. That's right, yes.

24 Q. Can we just go to bundle -- I'm going to just go on to
25 your on-boarding process. You set up a system, didn't

1 13:57 you, and monitored a system for client on-boarding; yes?

2 A. The compliance manual documents the on-boarding process
3 for clients.

4 Q. It wasn't just the compliance manual. You were actually
5 part of the on-boarding process, weren't you? You had
6 a role in it?

7 A. The compliance manual documents, how people have to
8 follow the on-boarding process. So, in the manual,
9 which is the one as part of my witness statement, which
10 is the May 2016 manual, so it would document there the
11 policies and the procedures that people have to follow
12 for on-boarding.

13 Q. One of those people was you, because you had a role in
14 the operations?

15 A. I had a role in on-boarding of certain clients.

16 Q. Can we go to exhibit F405.

17 This is an email between you and Mr Reid of the
18 DFSA. And if we scroll down the email -- sorry, just
19 give me one moment to make sure I'm looking at the right
20 one.

21 If you go, Fatima, to the second page of the chain,
22 you'll see that Mr Reid asks you in the second paragraph
23 about who the clients are, in substance. In particular,
24 underneath that, three private equity vehicles. You're
25 asked, can you clarify why they're not on the client

1 14:00 register and being treated as clients of Al Masah DIFC.

2 Do you see that? I'm looking at the second and third
3 paragraphs.

4 A. I'm just reading it now. Hang on.

5 Okay.

6 Q. Then your response to that is at the top of the page.

7 You say:

8 "With regards to B190 Form on Assets Under
9 Management, and also with regards to your comments
10 below. Al Masah Capital Management Ltd (AMCML) has
11 three clients who have AUM's -- these are as follows:

12 1) Al Masah Capital Management ..."

13 Then with the platforms you say at the end of the
14 bullet point 1:

15 "As our client is Al Masah Capital we have lumped
16 the three together under this client."

17 So you were taking the position, your client was
18 Al Masah Capital and that the investment companies
19 themselves weren't clients of Al Masah Capital
20 Management Ltd; yes?

21 A. Al Masah Capital was a client of Al Masah Capital
22 Management Ltd and you will see that it says that
23 previous correspondence with the DFSA indicated how we
24 should complete the PIB return.

25 Q. Yes. I'm not trying to criticise you. I'm just trying

1 14:02 to understand what your position at the time was. Your
2 position at the time was that the client was Al Masah
3 Capital and not the investment company; correct?

4 A. Sorry, not the investment what?

5 Q. Not the private equity structures, do you see that? You
6 say:

7 "As our client is Al Masah Capital we have lumped
8 the three together under this client."

9 A. Yes, that's correct.

10 Q. That was the position you arrived at based on your
11 understanding and interpretation of the regulations;
12 yes?

13 A. No, according to the previous correspondence that we
14 have had with the DFSA, as per that email.

15 Q. When we come to the question of on-boarding
16 shareholders, as I understand the process, documents
17 would be obtained from those shareholders; yes?

18 A. As I said to you before, on-boarding clients, whether
19 they be shareholders, whether they be anybody, if there
20 was a requirement to on board them as a client, the
21 rules in the compliance manual had to be followed.

22 Q. It involved KYC and money laundering checks; yes?

23 A. So they were a client of Al Masah Capital Management
24 Ltd, it would have been including the KYC checks and the
25 completion of the on-boarding requirements of the DFSA.

1 14:04 Q. That's something you also did for all the shareholders
2 in private equity?

3 A. No, that's not correct.

4 Q. There was a process for determining whether shareholders
5 met the criteria for being a professional client?

6 A. Sorry, I don't understand what you're meaning.

7 Q. All the shareholders were subject to an on-boarding
8 process, involving KYC money laundering and client
9 classifications as a professional client; right?

10 A. That's not my understanding. The shareholders, I was
11 the MLRO for Al Masah Capital Ltd and I undertook the
12 KYC checks on the shareholders only.

13 Q. You did the KYC checks on shareholders; yes?

14 A. The KYC checks were done on the subscribers into the
15 fund for Al Masah Capital Ltd as the MLRO.

16 Q. All the subscribers, we have already heard evidence from
17 Ms Zudikova, all the subscribers to the funds also went
18 through a process through you of being classified as
19 professional clients?

20 A. All the subscribers to the fund? I don't recall that.
21 I can't make that recollection.

22 Q. All the subscribers to the fund --

23 A. Sorry, I can't hear you too well.

24 Q. All the clients went through a process of submitting
25 documents and being classified before becoming investors

1 14:06 in the private equity?

2 PRESIDENT: Mr Hill, your voice is dropping out, from time
3 to time.

4 MR HILL: Sorry about that, sir.

5 PRESIDENT: That's okay. We can hear you, but it does drift
6 away a little bit from time to time.

7 MR HILL: I'm going to try and move the screen closer, see
8 if that helps.

9 All the subscribers that did go through a process of
10 submitting documents, having KYC checks and being
11 classified as professional clients within the meaning of
12 the DFSA rules; yes?

13 A. The subscribers to the fund were -- it was -- my role
14 was for the subscribers of the fund to be KYC checked as
15 per the appointment as money laundering reporting
16 officer for Al Masah Cayman.

17 Q. They also got classified as professional clients, didn't
18 they?

19 A. There was requirements on the subscription form that
20 they had themselves had to declare that they met, but
21 that is not -- I don't recall that those were the DFSA
22 regulations. This is -- these subscriptions were
23 nothing to do with the DFSA.

24 Q. Can we look at paragraph 42 of your witness statement.
25 You say there:

1 14:07 "The Compliance and Ethics Manual set out the
2 requirements for classification of clients into three
3 categories Retail Client, Professional Client or Market
4 Counterparty. These classifications were defined by the
5 Rules published by the DFSA, and are specifically
6 referenced in the Compliance and Ethics Manual."

7 Your classification of the investors as professional
8 clients was something that was done for the purposes and
9 within the meaning of the DFSA rules?

10 A. The witness statement was in regards to clients of
11 Al Masah Capital Management Ltd. So if -- as I said
12 before, if an employee deemed that a person had to be
13 on-boarded, a person or company, whoever they were
14 dealing with, had to be on-boarded, as a client of
15 Al Masah Capital Management Ltd, then they would have to
16 follow the classification process.

17 Q. Can we have a look at paragraph 44 of your witness
18 statement. It's just a bit lower down. You say there:

19 "The same tests and procedures as set out in the Al
20 Masah DIFC Compliance and Ethics Manual (for conducting
21 client due diligence and for determining whether a
22 client was a professional client or not) were used when
23 carrying out CDD and AML checks, on fund subscribers and
24 investors."

25 Then you go on to give an example of Mr Clink was

1 14:09 one of the investors.

2 A. Yes, I see that in my witness statement, yes.

3 Q. It's quite clear -- you give your answer.

4 A. So on the subscription form, there were certain
5 conditions that the subscriber had to meet and that was
6 documented on the subscription form.

7 Q. That included -- your process included, as you say in
8 your witness statement, checking and confirming that the
9 client was a professional client within the meaning of
10 the DFSA rules; yes?

11 A. No, it doesn't say within the definition of the DFSA
12 rules.

13 Q. It says in 44:

14 "... and for determining whether a client was a
15 professional client ..."

16 Then in paragraph 42, you explain:

17 " These classifications were defined by the Rules
18 published by the DFSA ..."

19 A. I see what that says, but it doesn't say in 44 that --
20 it doesn't allude to the DFSA rules.

21 Q. It says:

22 "... and for determining whether a client was a
23 professional client or not ..."

24 It says:

25 "The same tests and procedures as set out in the Al

1 14:10 Masah DIFC Compliance and Ethics Manual ..."

2 At paragraph 42, you explain that that test is a
3 DFSA rules test?

4 A. That is correct, yes.

5 Q. Back where we started, I was right in the questions

6 I first put to you, that you had a process that involved
7 on-boarding shareholders, conducting KYC and checking
8 that they were professional clients?

9 A. The subscribers were not on-boarded as clients of
10 Al Masah Capital Management Ltd, unless they needed to
11 be because, you know, they would have met the regulated
12 activities.

13 Q. You clearly took a view on what processes needed to
14 happen for on-boarding these investors. And I'm just
15 establishing with you, what processes did happen and we
16 can see that the processes that did happen included KYC
17 and classifying them as professionals rather than retail
18 people for the purposes of the DFSA rules; yes?

19 A. Not for the purposes of DFSA rule, that's not what
20 I have said in my witness statement.

21 Q. That's exactly what you said in your witness statement.
22 You were conducting an on-boarding function and
23 overseeing an on-boarding function, which included
24 classification of investors; yes?

25 A. I can only really refer to what was said in my witness

1 14:12 statement.

2 Q. If further steps were not taken to on board investors as
3 clients, that was a matter for you and your process?

4 A. No, I can't make that comment. No, I don't recollect
5 that.

6 Q. Can we look at exhibit 780. These are the procedures
7 and policies for the investor relations team. This is
8 investor relations team manual. You recall that
9 document?

10 A. I do recall that document, yes.

11 Q. Again, you had input into that document, didn't you?

12 A. I had some input into it, as my recollection -- yeah,
13 from my recollection.

14 Q. What it is, it's the manual for the investor relations
15 or placement team, isn't it?

16 A. This is the manual -- my understanding is that the
17 manual -- my recollection is it's the manual which was
18 drafted by the operations team.

19 Q. It deals with their operations and amongst other things
20 making sure that they're compliant; correct?

21 A. My understanding is that it was documenting the
22 activities of what they needed to do.

23 Q. If you look at page 3 of the document, we go to the
24 second paragraph, it deals with the business activities.
25 It explains under the title of "Business activities of

1 14:14 Al Masah Capital Management Limited":

2 "The principal business activity of the Al Masah
3 Group is to act as investment manager for the investment
4 funds launched by Al Masah Capital Limited (Cayman) (or
5 such other entities) which includes private equity
6 funds, hedge funds, and real estate funds.
7 Additionally, we will also act as investment manager on
8 discretionary asset management portfolios for High Net
9 Worth individuals and corporates."

10 This is a very similar description to what we saw in
11 the regulatory business plan earlier; correct?

12 A. It does appear to be similar, yes.

13 Q. Just scroll down a little to the next paragraph. It
14 explains:

15 "As part of its investment management activities,
16 Al Masah Group will conduct targeted marketing and
17 distribution activities on behalf of its investment
18 funds and platforms. However, there are very strict
19 compliance rules on marketing investment products in
20 different countries so you should contact the Compliance
21 Officer for clarification on how you may proceed to
22 undertake marketing activities outside the UAE."

23 That's dealing with the idea that if there's going
24 to be marketing outside the UAE, they should come to you
25 first; correct?

1 14:16 A. They should come to the compliance function, yes, for
2 advice.

3 Q. The compliance officer is you; yes?

4 A. Yes.

5 Q. A couple of paragraphs down:

6 "Al Masah Capital Management Ltd is the main
7 operation office of the Al Masah Group and is licensed,
8 as a Category 3c Company, by the DFSA to carry out the
9 following financial services ..."

10 You're explaining there that the DIFC is the main
11 operation office, and it's licenced in all these
12 respects; yes?

13 A. I wasn't explaining anything. This is not my manual.
14 I may have reviewed it, but this is not my manual.

15 Q. As we see, you did have input into it and you wouldn't
16 have allowed it to go out and be used if you hadn't?

17 A. I have input, I had a limited input into it. And, you
18 know, if they want to circulate it for use -- I was the
19 compliance function, I'm not the operations function.

20 Q. As you say, you would have reviewed it. This is
21 dealing, as we have seen, with compliance aspects,
22 because it's talking about the extent of the licence of
23 Al Masah Capital Management; yes?

24 A. This is just confirming what was sitting on the licence,
25 this paragraph.

1 14:17 Q. I know. That was the first question I asked you.

2 A. But I did not -- it is not my manual. I'd just like to
3 say, this is not -- I would not have been, you know,
4 responsible for the issue and adherence of this manual.
5 This is not my manual.

6 Q. We have already established that this is a manual that
7 you had input into. And if you like, I can show you
8 a document to confirm that. But I understood you to
9 accept that in the evidence and your evidence when
10 I first asked you about that.

11 Do you want me to show you a document or are you
12 happy to accept --

13 A. No, I would have had input, but it's not my document.

14 Q. If we look at the next paragraph, it says:

15 "This Investor Relations Team Manual provides an
16 overview of the policies and procedures which must be
17 followed by all members of the Investor Relations Team
18 in their daily work schedules and have been designed in
19 compliance with the laws, regulations and rules
20 applicable in the DIFC and the UAE."

21 It's making clear that this manual has been designed
22 to be compliant with the DIFC law and regulations; yes?

23 A. It is designed to recognise and follow the applicable
24 rules and regulations.

25 Q. If you look a bit lower down, Fatima, can you scroll

1 14:19 down a little, it says:

2 "Every Investor Relations Team staff member is
3 required to read this Manual and to comply with its
4 provisions. Non-compliance will be reported to the Head
5 of Compliance and Risk, as a breach."

6 It sets out the rules they are to follow. If they
7 don't follow the rules, they will be treated as
8 non-compliant and reported to you; correct?

9 A. Anybody not following the process, according to this,
10 would have had to be reported by the operations team to
11 me.

12 Q. Let's look at a section of this document, page 4, next
13 page. This deals with eligible clients and makes it
14 clear that, if you look at the beginning of this
15 paragraph, retail and indeed underneath the numbers in
16 the fourth paragraph:

17 "There should be no dealings with Retail Clients or
18 Small/Enterprises who do not have the requisite
19 experience or wealth ..."

20 Yes? It's making the point that the company doesn't
21 deal with retail investors?

22 A. That's correct, yes. That's what it says.

23 MR HILL: Can I just say, I'm going to be a little bit more
24 time with this document, everybody, and given the time,
25 I wondered whether now is probably the best time for

1 14:21 a break for the shorthand writer.

2 PRESIDENT: Yes, I was going to leave it until half past,
3 but if that suits you both, let's break now for
4 15 minutes.

5 Could I just clarify one matter about the hearing
6 timetable, which we're working off.

7 I have taken it from the emails immediately before
8 the hearing, a request for a joint timetable or
9 estimated timetable, that this was now an agreed one.
10 But it's been pointed out to me that appendix 2 is
11 strictly the DFSA's proposed hearing timetable.

12 Could you just clarify for us, Ms Clarke and
13 Mr Hill, where we are with that?

14 MR HILL: Yes, it's not strictly agreed, but I'm not sure
15 there's much between us. The issue of when closing
16 submissions should be is still at large and that's
17 something the tribunal is still thinking about. In
18 terms of the witness statement evidence, we had
19 suggested to DFSA that assuming I finish in time to get
20 Mr Dash on at some point today, you would rather expect
21 them to have finished Mr Dash and Mr Singhdeo by the end
22 of Thursday.

23 We haven't heard back from them on that point, but
24 that's what we would hope.

25 PRESIDENT: Okay. That's very helpful. We'll stop. It's

1 14:22 now 11.22. We'll return at 11.35. Thank you very much.

2 (2.22 pm)

3 (Short break)

4 (2.34 pm)

5 MR HILL: Ms Baines, would you be shown -- we were looking
6 at the investor relations manual, team manual. Could
7 you be shown section 9, starting at page 17.

8 This is still within the same manual. This is
9 entitled, "Client Types & Classifications". There are
10 two types of client, namely retail and professional:

11 "As mentioned earlier in this Manual, the Al Masah
12 Group is only allowed to deal with High Net Worth and
13 other Professional Clients.

14 Al Masah Group has to be concerned with two main
15 regulations ..."

16 Of which the first one is the DFSA regulatory body.

17 Then underneath that:

18 "The DFSA Regulatory Body.

19 The DFSA have published very clear and strict rules
20 that, unless a firm has a specific approval to deal with
21 Retail Clients -- only defined Professionals can be
22 Clients. Below is is the current DFSA definition of
23 a Professional Client."

24 This is reiterating to the placement team, isn't it,
25 that the group does not deal with retail clients and the

- 1 14:38 group and the team needn't be concerned with DFSA
2 regulations in that regard; yes?
- 3 A. To me, this is just simply an explanation of a DFSA
4 rule.
- 5 Q. It's more than that, isn't it? We just looked at the
6 paragraph explaining that the group only deals with high
7 net worth and other professional clients within the
8 meaning of the DFSA rules; yes?
- 9 A. That is the meaning of the DFSA rules, but obviously, we
10 would not deal with anybody that would sit in the
11 classification as a retail client.
- 12 Q. Then if, Fatima, could just scroll out, you can see that
13 the balance of the page is dealing with the process for
14 assessing and classifying a potential investor as
15 a professional client for the purposes of the DFSA
16 rules; yes?
- 17 A. Sorry, which paragraph are we looking at again?
- 18 Q. I'm just asking you to look yourself at the rest of the
19 page, save me reading it. It's dealing, isn't it, with
20 the process for assessing and classifying a potential
21 investor as a professional client for the purposes of
22 the DFSA rules?
- 23 A. On my limited recollection, this is what was in the
24 manual. I can't comment any more on that.
- 25 Q. This is all part of the on-boarding process?

1 14:40 A. Those were the policies that were set out in the manual
2 for the investor relations team to follow.

3 Q. If we go on to page 23 of this document, section 13. We
4 can see here you have a section entitled, "Client
5 On-boarding/Salesforce."

6 This provides, doesn't it, a step by step guide to
7 the on-boarding process for investor relations; yes?
8 Scroll down, you can see the steps.

9 A. It's my understanding that this, according to this in
10 the document, I have limited understanding, but it says
11 the process is to be followed using Salesforce. It
12 doesn't clearly say it's an on-boarding process.

13 Q. It's the on-boarding process that you were part of and
14 we can see you featuring, your role featuring in step 3:

15 "KYC and due diligence process starts and documents
16 are submitted by IR to Compliance for approval."

17 Step 4:

18 "Once Compliance approves, a notification goes to
19 the CEO, IR and Accounts."

20 You're part of this process?

21 A. I was part of the Salesforce process, purely for doing
22 the KYC, a due diligence on a subscriber into the fund.

23 Q. It's more than that, isn't it, because you were also
24 involved in satisfying yourself about the client
25 classification, whether the client was properly seen as

1 14:42 a professional client?

2 A. I have limited knowledge of that. My main role was when
3 the Salesforce notification came to me, was to do the
4 KYC and the due diligence on the subscribers into the
5 fund, which is what I did.

6 Q. More than that, as we have seen from this document, and
7 I don't want to spend more time on it, but it deals with
8 it in quite some detail. Part of the process is
9 establishing the client as a professional --
10 establishing the investor as a professional client
11 within the meaning of the DFSA rules and you checked
12 that that had been adequately done?

13 A. I have very limited knowledge. I have no knowledge of
14 what you're saying is the checks that I did.

15 Q. The client needed to be established as a professional
16 client and the documentation established that and was
17 provided to you for approval?

18 A. As part of this process, I did simply the KYC checks and
19 the due diligence checks that were coming through the
20 Salesforce system. And then I was putting through my
21 confirmation through the Salesforce, but that was for
22 KYC and due diligence.

23 Q. We can see in this manual, and we can all look at it
24 perhaps in more detail later, it's more than just KYC
25 and due diligence, because the documentation is making

1 14:44 it clear that this is part of the on-boarding process to
2 establish that the client is a professional client?

3 A. As I said, that's not my manual. I did not write this
4 manual.

5 Q. You took the view, presumably at the time, there was no
6 requirement beyond the steps that you had in place in
7 order to on-board the investors; correct?

8 A. I was simply doing the KYC and the due diligence as part
9 of my role for the subscribers as the MLRO for Al Masah
10 Cayman.

11 Q. Can you go to exhibit 758. You say here -- this is an
12 email from you to Mr Singhdeo, Mr Aziz, Mr Lim. You say
13 here:

14 "With regards to proof of wealth and income, we
15 don't do this check here in Dubai, as it is not required
16 for investors going to the Cayman investment companies.
17 This is primarily because we do not class these
18 investors as Clients of Al Masah Capital Management Ltd
19 (the DFSA regulated entity)."

20 That's making clear your view at the time, you
21 didn't class the investors as clients of Al Masah
22 Capital Management Ltd, did you?

23 A. That is what that email says, yes.

24 Q. That was your view at the time that you didn't class
25 investors as clients of Capital Management Ltd?

1 14:46 A. If that's what I wrote, then I can't recall my view, but
2 I obviously wrote, you know, that email.

3 Q. So it must have reflected your view at the time,
4 assuming you were being truthful?

5 A. I was being truthful in my communications.

6 Q. This was your area, wasn't it, about whether or not it
7 should be classified?

8 A. Sorry? My area?

9 Q. Your area, compliance officer, your area, about whether
10 or not it should be classified?

11 A. For Al Masah Capital Management Ltd, this would have
12 been -- you know, as compliance officer, that would have
13 been my area. But it very clearly says that I do the
14 AML KYC checks only.

15 Q. It's fair to say that a large number of investors came
16 through a referral agency in practice?

17 A. I wouldn't know that.

18 Q. You refer to them as distributors.

19 A. I wouldn't know that. I can't comment on that.

20 Q. You took the view, didn't you, that investors coming
21 through distributors wouldn't be treated as clients of
22 Al Masah Capital Management Ltd; yes?

23 A. What I'm saying here in the email is that we don't class
24 investors as clients of Al Masah Capital Management Ltd.

25 Q. I'm going to move on to the question of approving

1 14:47 marketing materials. Can I ask you to be shown
2 exhibit 632. This is an Al Najah presentation document.
3 I'll ask Fatima to go to page 2.

4 If you look at the bottom of this page, bottom
5 paragraph, you see it says:

6 "Al Masah Capital Ltd ('AMCL') has been appointed as
7 the Investment Manager and Placement Agent for AN. This
8 document is being distributed by Al Masah Capital
9 Management Ltd ... on behalf of AMCL. AMCL is
10 regulated by the Dubai Financial Services Authority
11 ('DFSA')."

12 This is some standard wording that you have put on
13 documents that you had approved; correct?

14 A. I can't recollect actually putting that wording on.
15 It's entirely possible that that wording, because the
16 presentation is dated December 2013, it's entirely
17 possible it was already there. I don't recollect
18 specifically putting that wording in there.

19 Q. This is a document that's on your marketing register and
20 that means it has been approved by you. You have a log
21 of marketing material you approve?

22 A. Yes, the process for approving marketing material was in
23 the compliance manual. If this document is on the
24 marketing register, I would have reviewed and approved
25 it, yes.

1 14:50 Q. It is on the marketing register and therefore you would
2 have approved this?

3 A. Well, I would have to check the marketing register.

4 Q. You'll have to take that from me. The language, then,
5 we see in this document, is consistent with it being
6 approved by you. Although it says this is distributed
7 by Al Masah Capital Management Ltd, that doesn't mean it
8 hasn't been approved, because as we see in this case,
9 the fact it's on your marketing register, it has been
10 approved; yes?

11 A. The compliance policy is that the marketing material has
12 to be reviewed and approved by the compliance officer
13 before it can be issued by the authorised firm.

14 Q. Having this language of "distributed by" is consistent
15 with you fulfilling that policy; yes?

16 A. Well, I wouldn't say that having the language
17 "distributed", but I would -- if it's on the marketing
18 register, I would have reviewed and approved it,
19 approved the document.

20 Q. You say in your witness statement, you have been told by
21 the DFSA there is some material found on Al Masah
22 computers, which is not on your marketing register. But
23 you, just to be clear, haven't looked through material
24 which the DFSA suggests was not approved to check
25 yourself whether you did or did not approve them?

1 14:51 A. No, I haven't looked through any material and checked it
2 against the marketing register.

3 Q. You're not aware of whether any of the material the DFSA
4 are talking about was or was not in fact used for
5 marketing?

6 A. Sorry, I'm not aware what?

7 Q. You're not aware of whether any of the material the DFSA
8 are talking about was or was not used for marketing;
9 yes?

10 A. If the document was not reviewed by me and not input on
11 to the marketing register, then in my view, I probably
12 wouldn't have seen it.

13 Q. The systems in place should have prevented material that
14 had not been passed to you and then used for marketing,
15 yes? That's why you had the system?

16 A. The policies and procedures were very clear on what
17 employees were required to do.

18 Q. You weren't aware there was anything going wrong with
19 those systems such that they weren't working?

20 A. With my very limited knowledge and remembrance of that
21 time, I was not aware, no. I was -- the policy was that
22 people had to decide what was marketing material. It
23 was sent to me. If it wasn't sent to me, I wouldn't
24 have known about it, because I would not have seen it.
25 I would not have put it on the marketing register.

1 14:53 Q. You explain in your witness statement that you didn't
2 include certain investor information as marketing
3 material, shareholder information; yes?

4 A. Yes, that's correct.

5 Q. That was your decision not to include them; correct?

6 A. I didn't see that, according to my witness statement,
7 the documents classed as shareholder communications
8 would not be classed as marketing material, because it
9 is a shareholder communication.

10 Q. I'll come back to that in a moment. But just to be
11 clear, you were satisfied of all the marketing material
12 you did see, it was clear, fair and not misleading; yes?

13 A. The process was that I would review the documentation in
14 accordance with the DFSA requirements. If there were
15 any changes or clarifications to be done, I would follow
16 that through and once I was happy with it, I would sign
17 it off. If I wasn't happy with it, it wouldn't get
18 signed off.

19 Q. You suggest in your witness statement that your approval
20 process did not extend to subscription forms. Is that
21 because you didn't regard those as promotional or
22 marketing documents?

23 A. I did not regard them as promotional or marketing
24 documents.

25 Q. That, presumably, is the advice you gave Al Masah at the

1 14:55 time?

2 A. I don't recall giving any specific advice on that matter
3 at the time.

4 Q. Although you didn't see them as marketing documents, you
5 were in fact involved, weren't you, in approving the
6 drafting of the subscription forms?

7 A. My recollection was that, as MLRO, money laundering
8 reporting officer, I reviewed the subscription documents
9 to primarily focus on the requirements of obtaining
10 information from the subscriber for KYC purposes.

11 Q. Could we look at bundle C010, SKD 3-13. This is quite
12 a long thread. I'm going to ask you, Fatima, to go to
13 page 35 of this thread. This is an email from you.
14 It's part of a long chain. It's an email from you to
15 Mr Badr. You say:

16 "Hi Ayman,

17 Please find attached the amended Subscription Form,
18 as amended by me ... A lot of the inserts done by
19 Walkers do not need to be in there and as long as the
20 all of the following documents are given to new
21 investors -- then all of the relevant information has
22 been provided to them prior to investment ... This is
23 essential to meet our obligations of adequate prior
24 disclosure ...

25 (1) Offering Presentation ...

1 14:57 (2) Memorandum and Articles of Association of the
2 Company ...

3 (3) Subscription Form.

4 Please ensure that the Placement Team always provide
5 investors with the above documents."

6 Then you say:

7 "I am also going to make some slight amendments to
8 the Offering Presentation and will send these over
9 shortly."

10 We can see that you have been involved in actually
11 making amendments to the subscription form; yes?

12 A. That's what that email says, yes.

13 Q. You were ensuring it was ultimately in a form you were
14 satisfied with; yes?

15 A. I was giving my opinion on the documents.

16 Q. And making clear, and in particular, we can see you're
17 covering the question of whether there has been adequate
18 prior disclosure. You're explaining what else needs to
19 be provided to investors; yes?

20 A. But I can't see the whole email, so I'm only just
21 looking at part of this. This must have been as part of
22 a discussion or, you know, other sort of discussion
23 around -- just this email on its own, I don't see how --
24 -- (Overspeaking) --

25 Q. Do you recall --

1 14:58 A. -- on its own.

2 Q. I will tell you a little more. What's happened is
3 Walkers have provided amendments to a subscription form
4 as you can see and then you have commented on that.
5 You say:

6 "A lot of the inserts done by Walkers do not need to
7 be in there and as long as all the following documents
8 are given to new Investors ... This is essential to
9 meet our obligations of adequate prior disclosure ..."

10 What you're doing is commenting --

11 PRESIDENT: I'm sorry to interrupt, but I think the witness
12 ought to be allowed to see the whole of the particular
13 email she's referring to, as I think she suggested.

14 MR HILL: Yes, I'm not sure there is any more.

15 PRESIDENT: If there isn't, it's fine, but I think she did
16 make that request.

17 MR HILL: I'm sorry, yes.

18 MS CLARKE: Sir, I'm sorry to interject, but of course, the
19 whole exhibit is 130 pages and if the witness wishes to
20 review 130 pages, I would submit she should be entitled
21 to do so.

22 MR HILL: I have no problem. I can't see the purpose of
23 that, but I have no problem with it.

24 MS CLARKE: It depends on whether the witness has indicated
25 that that's what she would like to do.

1 14:59 PRESIDENT: I think when a witness indicates what she would
2 like to do, some of the things she would like to do, the
3 court wishes to assist in it. Some of the things, they
4 may not want to assist at all.

5 I only intervened because I understood it seemed to
6 me, she had a little concern, because she was being
7 shown part of an email and indicated that she would like
8 to see the whole one. I wasn't intending to let loose
9 some sort of an investigation of 130 pages.

10 MS CLARKE: Perhaps the witness could be asked what she
11 would like to review in order to put that email into
12 context.

13 WITNESS: Yeah, all I really wanted to understand was --

14 PRESIDENT: I'm sorry. Mr Hill can look after himself, but
15 I think the way we're dealing with that is if you're
16 unhappy or want the thing clarified, then you, in
17 re-examination, can put whichever bits of 130 pages you
18 wish to do.

19 MS CLARKE: Very well.

20 MR HILL: Ms Baines, we were talking about the subscription
21 form and it's fair to say that while you didn't see it
22 as part of the marketing promotional material, you
23 nevertheless satisfied yourself that it was not -- that
24 it was clear, fair and not misleading; yes?

25 A. I can't comment on that. The marketing materials are

1 15:01 the ones that I would be considering as reviewing
2 against the DFSA regulations, which are fair, clear and
3 not misleading. If the document was not considered
4 a marketing material, my recollection is, I wouldn't be
5 looking at it in that manner.

6 Q. It's clear you are looking at it in that manner, because
7 we can see just from this email you're dealing with what
8 is necessary to meet the obligations of prior disclosure
9 to shareholders. You have obviously got your eye on
10 that, haven't you?

11 A. But from the bit of information I've seen, this is
12 merely an opinion.

13 Q. Can we go to bundle C016, SKD 4-10. This is the
14 document number, for Fatima, is 20140501, "Email FW MOM
15 and Project Plan."

16 This is an email from Ms Danila.

17 Could Fatima scroll down a little. It's addressed
18 to a number of people, including you. You see you're on
19 the email?

20 A. I'm on the cc, yeah.

21 Q. You're the first on the cc, in fact. The email says:

22 "Dear Ashraf,

23 Thank you for your email.

24 Please find enclosed above the following:

25 The Placement Process.

1 15:03 The Accounting Process ...

2 The Investor Relations Process ...

3 If you have any questions please let me know."

4 Just scroll down in that email to the bottom of

5 page 2. You'll see what it's a response to. This is

6 from Mr Ashraf Karayath:

7 "Dear Andreea,

8 Thanks very much for meeting with us on

9 28 April 2014. As discussed and agreed, I am forwarding

10 you the MOM (Minutes Of the Meeting) and the project

11 plan. Hope you will be sending us all the business

12 process related documents by tomorrow. In case we have

13 any doubt on the same, we will call you for

14 clarifications."

15 So this is dealing with a project by which

16 Salesforce started providing services for your

17 organisation. Do you recall that?

18 A. I do recall that, yes.

19 Q. You were involved, weren't you, in the appointment of

20 Salesforce to provide the business management system for

21 the company; yes?

22 A. I don't recall being involved in the appointment.

23 Q. I don't mean the formal appointment. You were involved

24 in the project of identifying them, meeting them and

25 selecting them; yes?

1 15:04 A. I don't recall being involved in that whole process.

2 Q. Can we then look at bundle C016, SKD 4-7. It's email
3 "Sales Force Information". This is an email from you to
4 everyone providing information about Salesforce. You
5 were involved in the process, weren't you?

6 A. I was involved in the process of developing the
7 Salesforce system. I was involved as part of a project
8 team, so I had the limited contribution. I do not
9 recall being involved in the approval process for the
10 company itself, your previous email, Aphidas.

11 Q. Let's go back to that email again. That was the last
12 email we were on. You're copied in.

13 A. Yes.

14 Q. It would have been your practice obviously to look at
15 material that was copied to you; correct?

16 A. I would have been -- if my recollection serves me
17 correctly, I would have been copied in on it. But my
18 limited recollection is that I think we met a couple of
19 different potential partners in this, but the decision
20 to go with Aphidas was not mine.

21 Q. If we look at the attachment to this email. Could
22 Fatima bring up C016, SKD 4-10, the document is 20140100
23 to 20140331, "Attached with Email -- Placement fees --
24 Flow Chart."

25 This is one of the attachments to this email and you

1 15:07 can see it's entitled, "Placement fees Process Flow."

2 If Fatima could scroll out, so hopefully, we can see
3 the whole chart.

4 This is explaining the system under which placement
5 fee income was due by reference to the amount subscribed
6 by investors into the Cayman investment companies. And
7 out of that money, there were amounts to be paid to any
8 third-party providers who themselves were due
9 a placement fee. Do you see that?

10 Do ask if you want it blown up.

11 A. I do see the document, yes.

12 Q. You would have received that document at the time and
13 understood what it meant; yes?

14 A. I have no recollection of this document.

15 Q. At the time, doing your best now, you would have
16 received it, opened it in the usual way, because it's
17 sent to you?

18 A. If it was an attachment to that email, I was a cc, I was
19 copied on that email. I do not remember this
20 attachment.

21 Q. But the information that we see that's on it, explaining
22 about placement fee income and what happens to placement
23 fee income and what the process is for placement fee
24 income, it is no surprise to you that that's something
25 that you would have understood anyway; correct?

1 15:09 A. I have no recollection of this process.

2 Q. You do recollect placement fees were received by
3 Al Masah Cayman by reference to the amounts subscribed
4 by investors, don't you?

5 A. I have no recollection of that.

6 Q. You also recollect, don't you, that placement fees or
7 commissions or brokerage fees were paid to third-party
8 agents who introduced investors; correct?

9 A. My knowledge is limited to the distribution agreements
10 that I looked at as part of my KYC screening of the
11 distributors. Whatever was in that document is what
12 I would have seen and what I can recollect.

13 Q. You would have known that payment of brokerage fees were
14 due to them as a result of doing it from those
15 documents; yes?

16 A. Whatever was in the document, I had sight of those
17 documents as part of the KYC process.

18 Q. That included the fact that brokerage fees were paid to
19 those third-party distributors; correct?

20 A. I only saw the distribution agreements. I did not see
21 and I do not -- I have no knowledge of the operation of
22 the agreements. I just saw the agreement with the
23 details of the third party, so I could do the KYC
24 review.

25 Q. So you knew that they contained an entitlement to

1 15:10 brokerage fees; yes?

2 A. The document gave the roles and responsibilities of both
3 parties which, in my view, and from my limited
4 recollection, included a fee.

5 Q. That fee came out of, was paid out of the Cayman -- that
6 Al Masah Cayman in turn charged to the investment
7 platform?

8 A. I can't comment on that. I have no knowledge of that.

9 Q. You did have a knowledge at the time and an
10 understanding of that at the time?

11 A. I don't remember having a knowledge of that at the time.
12 I don't recollect that at all.

13 Q. Still in these attachments, could Fatima bring up C016
14 SKD 4-10. This should be entitled, "Staff Commissions".

15 Perhaps you can scroll down, Fatima.

16 This is making it clear that there were commissions
17 being paid to staff on the basis of placement fees
18 earned by Al Masah Cayman. You would have seen this
19 document at the time as well, wouldn't you?

20 A. I don't recollect seeing this document.

21 Q. You knew anyway that Al Masah staff were getting
22 a commission, if they introduced investors based on the
23 amount that Al Masah Cayman would earn; correct?

24 A. I have limited knowledge of that. I was not party to
25 any of the remuneration operations or practices of

1 15:12 Al Masah Capital Management Ltd.

2 Q. But you did know, didn't you, that staff were getting
3 commissions based on introductions; correct?

4 A. I have limited knowledge of that. I did know that
5 that -- you know, this process existed. This process is
6 attached to an email as just as something for a third
7 party to start designing a computer programme.

8 Q. You did know at the time -- sorry?

9 A. Because I'm cc'd on it, I would not agree with you that
10 I am aware and have knowledge of all these processes,
11 because I didn't.

12 Q. But you did know at the time -- don't worry too much
13 about the detail of the process. You did know, at the
14 time, Al Masah staff were getting commissions based on
15 introductions; correct?

16 A. I was not party to the remuneration operations and
17 policies of Al Masah Capital Management Ltd.

18 Q. It is not a question of what you were party to. Would
19 you answer my question. It's a question of what you
20 knew.

21 A. I don't recall that I knew any of that.

22 Q. You did know, didn't you? Al Masah staff were getting
23 remunerated, based on introductions, and that was
24 a share of placement fees in turn earned by Al Masah
25 Cayman; correct?

1 15:14 A. No, I cannot say that, no.

2 Q. Your oversight of the Al Masah organisation also meant
3 you understood what the main sources of income were.
4 You understood that they included placement fees as
5 a part; yes?

6 A. No, that's not correct.

7 Q. This placement team, who are earning a share of this,
8 are sitting in your offices, you're dealing with them on
9 a day-to-day basis, aren't you?

10 A. Sorry, can you repeat that again?

11 Q. The placement team, who are taking a share of this
12 income, they're all sitting in your offices. You're
13 dealing with them on a day-to-day basis, aren't you?

14 A. The placement team was sitting in the office, that's
15 correct. And I did see them on a day-to-day basis, yes.

16 Q. But you're not suggesting you were unaware of how their
17 remuneration was derived?

18 A. I was not aware on how their remuneration was documented
19 or calculated or paid. That is not my area. I am not
20 the HR function. I was the compliance function.

21 Q. Ms Zudikova, as we found out, and the placement team,
22 all understand about the placement fees earned by
23 Al Masah Cayman. Are you suggesting to us that you
24 didn't understand them?

25 A. Sorry, say that again?

1 15:15 Q. Because we have got the situation where it was like all
2 the staff in the organisation were aware of these
3 placement fees, the placement team were aware of them
4 because they're trying to earn a cut of it. Ms Zudikova
5 was aware of them. Are you suggesting to us that you
6 were not aware of them?

7 A. I was not, in accordance with my witness statement,
8 I was not aware of the placement fees.

9 Q. Can you go to exhibit F206. This is an email -- it's
10 before your time. This is a 2012 email, you were not on
11 it. But it's an email to all staff, from Mr Singhdeo.
12 And you can see, for example, a number of people who are
13 on it, such as Ms Zudikova and Juliet Lewis, who is, as
14 I understand it, an admin person, correct?

15 A. Sorry? Say that again?

16 Q. Juliet Lewis, she was an administration person, wasn't
17 she?

18 PRESIDENT: Mr Hill, you cut out again. Could you just go
19 back and ask that question again. We couldn't hear you.

20 MR HILL: Yes. I'll start from the beginning of this email.
21 It's an email from Mr Singhdeo to all staff. You're not
22 on it, because it's before your time. But it includes
23 a number of people who are on it, including Ms Zudikova
24 and including, for instance, Juliet Lewis.

25 My first question is just to a point of detail.

1 15:17 Juliet Lewis was on the administration side; correct?

2 A. When I joined the company, that was where she was as far
3 as I can remember.

4 Q. We can see what Mr Singhdeo says:

5 "I am forwarding an earlier mail again to all staffs
6 as there has been new addition to our team. This
7 explains about the incentive what staffs can earn for
8 introducing client/investors to the Company. Feel free
9 to check with me in case any clarification is required."

10 Then can you scroll down further, Fatima. And
11 you'll see Mr Singhdeo is forwarding an earlier email:

12 "Dear All,

13 Would like to inform you that we have launched our
14 Education Platform and are in the process of raising
15 money from investors. As conveyed in my earlier mail,
16 we would like all staffs to refer clients/investors for
17 various Products that are launched by the Company and in
18 the process earn an incentive/referral fee.

19 Accordingly, the following guidelines will be followed
20 for calculating incentive fees to staffs for referring
21 investors/clients:

22 -- All staffs can earn a referral fee of 5% on the
23 income booked by Al Masah from a client referred by him.
24 Accordingly, you will earn the referral fee on the
25 initial placement fees plus the recurring management fee

1 15:19 income that is booked by the Company."

2 Mr Singhdeo is entirely open to all staff in the
3 company about the fact that placement fees are earned by
4 Al Masah Cayman; correct?

5 A. I mean, I can't comment on this email because it was
6 before my time.

7 Q. But what it shows is that all staff in the company were
8 told and would have understood about the fact Al Masah
9 Cayman paid -- was paid placement fees; yes?

10 A. The email, because it was before my time, I cannot agree
11 that it was sent to all staff. I wouldn't know all
12 staff. I wouldn't know the staff that were employed at
13 this time. I cannot agree with you that I would know
14 that this email was sent out to all staff.

15 Q. This arrangement continued, this share that staff would
16 get continued throughout your time?

17 A. I have no knowledge of that. I didn't see the email
18 and, you know, I was not involved in that, so I have no
19 knowledge of that.

20 Q. The evidence you're giving now is not correct, is it,
21 because you did, in fact, know about placement fees;
22 yes?

23 A. No, I did not know about placement fees. I was not
24 aware.

25 Q. You knew, didn't you, that Al Masah was appointed as

1 15:20 placement agent; yes?

2 A. I would just like to refer to my witness statement.

3 I was not aware that the placement fees were charged, so
4 that is documented in my witness statement.

5 Q. You did know, didn't you, that Al Masah Cayman was
6 appointed as placement agent; correct?

7 A. I can't comment on that such broad statements.

8 Q. Can you go to exhibit 636, page 5. Fatima, can you go
9 back to exhibit 632, just to save time, to look at
10 a document we have seen before.

11 Back at that paragraph we saw before, you see that
12 it's recording that Al Masah Capital Ltd has been
13 appointed as placement agent for Al Najah. That was
14 a document you approved. So you did understand Al Masah
15 Capital was appointed as placement agent; correct?

16 A. At the time this document was written, I would agree,
17 I would assume that that would have been correct.

18 Q. You would have reviewed the placement agreement to
19 verify that, wouldn't you?

20 A. I don't recall reviewing any placement agreement.

21 Q. In order to satisfy yourself about the accuracy of this,
22 you would have reviewed that agreement, wouldn't you?

23 A. No, I would not. This says that it was appointed as
24 investment manager and placement agent for Al Najah.

25 I would not have reviewed any agreements between

1 15:23 Al Masah Capital and Al Najah. That was not within the
2 remit of my job.

3 Q. They would have been available to you and on your file,
4 wouldn't they?

5 A. I was reviewing the documentation to make sure it was
6 clear and fair and not misleading. I didn't -- I mean,
7 I could have probably asked for that document, but
8 I wouldn't have been given it as a matter of course.

9 Q. The revenue streams, including placement revenues for
10 Al Masah Cayman, were also discussed in minutes of
11 meetings of management that you attended, weren't they?

12 A. I have no recollection of that.

13 Q. Would you go to bundle C010, SKD 3-9. This is the
14 meeting we looked at yesterday. And could I ask you to
15 go to item 6 of that. We have a bullet, if we look at
16 (g), it says:

17 "Total budgeted gross revenue for the period was USD
18 7,239K whereas actual gross revenue for the period was
19 USD 8,973K ... Similarly, budgeted net revenue was
20 USD 4,839K whereas actual net revenue was
21 USD 5,983K ..."

22 Then at the bottom of the bullets:

23 "Mr Zainal enquired, how much of the above gross
24 income is one time and how much is of recurring in
25 nature. It was explained that out of the total gross

1 15:25 income of USD 8,973K, approximately USD 6,600K are one
2 time and balance USD 2,373K are of recurring nature."

3 This is one of a number of examples of discussions
4 that you would have been party to, discussing the one
5 time placement fee Al Masah Capital had as part of its
6 income; correct?

7 A. No, that's not correct. I was not party to such
8 discussion.

9 Q. You were party to this one, because you were present at
10 this meeting that we saw; correct?

11 A. The minutes of the meeting do not show me as being
12 present and I don't have a recollection of being
13 present.

14 Q. If you look just a little bit further down, this was the
15 meeting, paragraph 8, where the board was introduced to
16 a new compliance officer and she updated the board with
17 various compliance monitoring. You were present at that
18 meeting, because you were updating the board in relation
19 to compliance; correct?

20 A. I may have been there for only the subject of the
21 discussion. I do not recall being there at that
22 meeting, for that whole meeting, and I don't recall ever
23 having or being subject to part of the financial
24 discussions.

25 Q. You were part of the executive management committee and

1 15:26 you were party to the discussions like this, weren't
2 you?

3 A. I was a member of the executive management committee for
4 Al Masah Capital Management Ltd. I was not executive
5 management committee at Al Masah Cayman of this board
6 meeting. I don't recollect all of the discussions at
7 the board meeting and I don't believe I was there for
8 the entire board meeting.

9 Q. Can we come back to the third-party brokers, third-party
10 introducers, who you have accepted you were aware they
11 were being paid brokerage fees. You knew that the
12 payment of those fees was not being disclosed to
13 investors otherwise than by reference in the articles of
14 association of the company; correct?

15 A. No, that's not correct.

16 Q. Did you think there was disclosure being made to
17 investors of the fees being paid to third-party
18 distributors?

19 A. My job with regard to the distributor agreements was
20 merely to just do -- I had a very limited role, which
21 was to do the KYC on the distributors before these
22 agreements were signed by the company. That was a very
23 limited role with regards to these distributor
24 agreements.

25 Q. Can we have a look at bundle R003, page 128, 354.

1 15:29 This is an email from you, in February 2014,
2 entitled, "Mirabaud Agreement". Then you say:
3 "Hi Saikat & Mustafa,
4 As discussed, please find attached the amended
5 Referral Agreement which now takes into account both the
6 Confidentiality of names supplied to us and also the
7 requirement for them to advise us of names of
8 prospective referrals/clients before they are approached
9 (as per Shailesh's request) ...
10 Kindly review the agreement and if you are happy
11 with the same send to Hasret at Mirabaud advising her
12 that this is the 'latest draft' -- BUT that it is still
13 subject to approval by Shailesh but he's currently
14 travelling and will not be back in town until next week.
15 It is not advisable for them to sign the Agreement
16 before Shailesh has seen it and I would recommend that
17 Shailesh signs it first and then it is given to the
18 Mirabaud CEO for his signature afterwards."
19 You're getting involved in the negotiations and the
20 amendments of the third-party referral agreement, aren't
21 you?
22 A. My limited recollection of this particular agreement was
23 that I was involved in just doing some amendments to
24 this particular referral agreement. It was not my role
25 to get involved in referral agreements normally. This

1 15:31 was an exception. In my limited recollection, this was
2 an exception that I had been asked to get involved in.

3 Q. But in the course of getting involved in referral
4 agreements, whatever extent, as you have already
5 accepted, you did come to learn that there were
6 brokerage fees being paid to referral agents for
7 introductions. You accepted that; yes?

8 A. Yes, I accept that the fees would be in the referral
9 agreement. But for this particular one, it looks
10 like -- and I have very limited recollection, but it
11 looks like I was looking at purely confidentiality
12 issues. Nothing to do with fees or charges or placement
13 fees or anything else. Purely confidentiality clauses
14 within the agreement.

15 Q. You knew that the fees being paid to third-party brokers
16 were not being disclosed to investors, to shareholders,
17 otherwise than through the reference to brokerage fees
18 in the articles of association for platform companies;
19 yes?

20 A. I don't know. That's not correct.

21 Q. That must have been your knowledge at the time and can
22 you suggest that you had any other understanding at the
23 time?

24 A. I have no recollection, no.

25 Q. You took the view that that reference was adequate, that

1 15:32 there was nothing unclear or unfair or misleading about
2 the information being provided to shareholders; is that
3 correct?

4 A. No, I didn't take any such view.

5 Q. You were aware of the arrangements in respect of
6 placement fees, both to third parties and to Al Masah
7 Cayman, and you approved the marketing documentation
8 when you satisfied yourself about the subscription fee;
9 correct?

10 A. No, that's not correct.

11 Q. You took the view that -- it was your view, there was
12 nothing misleading about not making more detailed
13 reference to placement fees; correct?

14 A. I didn't make any such view.

15 Q. You didn't, at any stage, advise management there should
16 be additional disclosure of placement fees?

17 A. I don't recall any such discussion.

18 Q. It's fair to say when you were interviewed by the DFSA
19 some time ago, you knew they were interested in
20 placement fees, whether they had been sufficiently
21 disclosed to shareholders in the sales literature you
22 had approved, and you were seeking to distance yourself
23 from that literature by incorrectly suggesting you were
24 unaware of the placement fees. That's the position,
25 isn't it?

1 15:33 A. No, you have all the information in the transcript
2 documents and the witness statements.

3 MR HILL: Thank you, Ms Baines. You'll now have questions
4 either from the tribunal or from my learned friend.

5 PRESIDENT: Ms Clarke?

6 MS CLARKE: Thank you very much.

7 Re-examination by MS CLARKE

8 MS CLARKE: A few questions, Ms Baines.

9 Can I first ask you, please, about something that
10 you were asked fairly early on yesterday, when Mr Hill
11 started asking you questions. And he put to you,
12 I think he did it a number of times, that you were in
13 fact the group compliance officer for Al Masah Cayman as
14 well as Al Masah DIFC. Did you regard yourself as the
15 group compliance officer?

16 A. No, I didn't. I did not regard myself as the group
17 compliance officer. As mentioned, my roles were
18 specific for the three entities mentioned, which was the
19 MLRO role for Al Masah Cayman and the compliance and
20 MLRO role for Al Masah Capital Management Ltd and the
21 Singapore entity.

22 Q. In connection with, I think that same topic, you were
23 referred to a couple of documents. I'm just going to
24 take you to them, just because I want to ask you about
25 something else that was in them that wasn't raised by

1 15:35 Mr Hill.

2 It's not that I'm just going to repeat what's
3 already been done. Could we please go to SKD 4-2, C016.
4 It is "Email Compliance Presentation".

5 Just to set the scene, you may remember it well, but
6 this email is dated 7 November, so you hadn't been with
7 Al Masah Capital Management Ltd for very long at that
8 time, had you?

9 A. No, I hadn't.

10 Q. You'll recall that you were asked about the fact that
11 you had completed a compliance presentation for the
12 board meeting on Sunday. Could I ask you to look at the
13 footer of the email and your signature. And you can see
14 that it is:

15 "Helen Baines.

16 Head of Compliance & Risk.

17 Al Masah Capital Management Ltd."

18 Is that the footer that you always used for your
19 emails?

20 A. Yes, that's correct.

21 Q. Is that because of the reason that you have just given
22 me to the question that I asked you before?

23 MR HILL: I don't want to intervene, but could my learned
24 friend attempt not to ask leading questions.

25 MS CLARKE: All right. Why was it that you used that footer

1 15:37 wording?

2 A. Because my understanding is that that was my role. That
3 was my appointed role. And also I was the authorised
4 individual for Al Masah Capital Management Ltd, so
5 that's why I would have used that footer. That would be
6 my limited recollection of the events anyway back then.

7 Q. Could I ask you to go to another document that you were
8 shown yesterday and it's SKD 4-19, again in C016.

9 If we could just scroll down to the middle of the
10 first page. Just to set the scene, you were asked about
11 this document, it being draft terms of reference for an
12 executive management committee. And, of course, we can
13 see there that it says, "Al Masah Capital Ltd".

14 I think that what you were asked was whether the
15 executive management committee, for which you drafted
16 the terms of reference, was for Al Masah Capital as
17 opposed to Al Masah Capital Management Ltd.

18 As I recall your answer, and I hope Mr Hill won't
19 consider this leading, because I'm sure the transcript
20 will reflect my note, your answer was that your view was
21 that this was an executive management committee for
22 Al Masah Capital Management Ltd. Have I got that right?

23 A. Yes, that's correct.

24 Q. Could you then scroll down to page 2 of that email.

25 I'm not going to take you through all of it, you'll

1 15:39 be pleased to hear, but the third paragraph there under
2 "Introduction", can you read those words, those two
3 lines to yourself.

4 A. Okay.

5 Q. You can see that what it says there is the EMC for
6 Al Masah Capital Management Ltd. Why is it that that
7 wording is specifically used? Can you help?

8 A. I can't recall, actually. I can't recall why that word
9 was specifically used. I can just maybe opine that it
10 was -- the document is actually intended, the whole
11 document is intended as the executive management
12 committee for Al Masah Capital Management Ltd, not
13 Al Masah Capital Ltd.

14 Q. Would you regard that two-line statement as being
15 consistent or inconsistent with your view of which
16 entity this executive management committee was for?

17 A. That statement is consistent with my view that the
18 document is for Al Masah Capital Management Ltd.

19 Q. I'm going to ask you now about a slightly different
20 topic. You were asked about your role as compliance
21 officer and your compliance function, including
22 compliance and risk. Do you recall being asked about
23 that?

24 A. Yes.

25 Q. You were asked about whether it was part of your role to

1 15:42 identify and report anything that made the company
2 non-compliant; do you recall that?

3 A. Yes.

4 Q. If the company was non-compliant, to take steps to
5 remedy the non-compliance?

6 A. Yes.

7 Q. In your view, would that depend on whether or not
8 a matter was brought to your attention?

9 A. It would, in part, depend on that, yes. Also from the
10 compliance monitoring programme, if there was anything
11 from there as well.

12 Q. I know that you told us that you did a monitoring
13 programme, but assuming that nothing showed up on that
14 and assuming that nothing was brought to your attention,
15 would that, then, give you any information to make any
16 reports to anyone about anything?

17 A. No.

18 Q. Another document that you were asked about is F401. The
19 document is the 2013 Al Masah Capital Management Ltd
20 manual.

21 A. Yeah.

22 Q. I think actually you were referred to this a number of
23 times.

24 Just to be clear, the fact that it is headed,
25 "Al Masah Capital Management Ltd Manual", does that

1 15:44 accord with your understanding of which entity it
2 related to?

3 A. Yes.

4 Q. If we could go to the -- I think it's SKD 3-11. I think
5 what we need to do is scroll down to page 86, because
6 that gives us the 2013 version -- in fact, if you go up
7 to page 81, that gives us the very first page. Can you
8 see that? It's very small. Can you see that okay?

9 A. Yes.

10 Q. What was pointed out to you yesterday, amongst other
11 things, is that the compliance manual is headed,
12 "Al Masah Capital Group of Companies"; yes?

13 A. Yes.

14 Q. Could you go to page 86. It says there
15 "Identification":

16 "Al Masah Capital Management Ltd ('AMCML' or 'the
17 Company' ..."

18 The fact that those are both in italics, does that
19 mean -- well, I'm not sure there can be any objection to
20 me leading on this, but in your view, does that make
21 them defined terms in this document or not?

22 A. They would have been in italics, yes, so that I wouldn't
23 need to repeat those words in the body of the document.
24 So I would just use either "the company" or the
25 initials, "AMCML" or "DIFC", in the body of the

1 15:47 document.

2 Q. Exactly. So when we see either of those terms, "AMCML"
3 or "the company", what that means is it's a reference to
4 Al Masah Capital Management Ltd; is that right?

5 A. That's correct, yes.

6 Q. It just saves you from having to type out that rather
7 long name every single time, doesn't it?

8 A. That's correct, yes.

9 PRESIDENT: That's three non-re-examination questions
10 running. I take it there be no objection. It's all
11 right with Mr Hill?

12 MR HILL: Well, I'm afraid it's not all right. I don't want
13 to upset everyone by intervening all the time, but I am
14 a little concerned that we have had a series of
15 questions which is not re-examination. This last point
16 is inconsistent with paragraph 16 of the witness's own
17 witness statement.

18 MS CLARKE: It was put to this witness --

19 PRESIDENT: I don't want to be over-formalistic about this,
20 but I did notice three running, so perhaps you could
21 moderate a bit.

22 MS CLARKE: I'm sorry. I was just trying to set the scene.
23 My understanding was that --

24 PRESIDENT: You asked three questions which invited an
25 answer. You asked three of them running. If there's no

1 15:48 objection and it's not very heavyweight stuff, and we're
2 not strictly in a court, we'll let that go. But you've
3 got the general tenor of what Mr Hill said.

4 MS CLARKE: No, I understand that.

5 PRESIDENT: Keep that in mind. Thanks very much.

6 MS CLARKE: I hadn't thought that that would be contentious,
7 but if it is, then I apologise.

8 Can I then just ask you about the next section.

9 Sorry, the remainder of that, under "Identification":

10 "The Company is wholly owned by Al Masah Capital Ltd
11 (the 'Holding Company' ..."

12 Do you see that?

13 A. Yes, I do.

14 Q. Then at 1.2, it says:

15 "Business activities of Al Masah Capital
16 Management Ltd.

17 The principal business activity of AMCML is to act
18 as investment manager ..."

19 Et cetera. I think that was put to you yesterday;
20 yes?

21 A. Yes.

22 Q. Then the next section refers to the compliance manual
23 and you'll see the words:

24 "This Compliance Manual provides an overview of the
25 rules applicable on the Company ..."

1 15:49 Yes?

2 A. Which section is this? I can't see.

3 Q. 1.3, line 1.

4 A. Yeah, I can't see that on the screen.

5 Q. I'm sorry. 1.3, line 1.

6 A. Okay.

7 Q. "This Compliance Manual provides an overview of the
8 rules applicable on the Company ..."

9 Yes?

10 A. Yeah, that's correct.

11 Q. Then the same thing, I'm not going to make the same
12 point again and again, but then we go to corporate
13 governance, which is the next section. We have another
14 reference there to "the company".

15 A. That's correct.

16 Q. Based on what you have told us, where in this document
17 the words "the company" are used, what company are we
18 referring to?

19 A. Al Masah Capital Management Ltd.

20 Q. The next matter, SKD 4-15. It is the QRM report. The
21 top of the page refers to "AMCML" and the name of the
22 firm AMCML. For the avoidance of doubt, which firm was
23 this document relating to?

24 A. I can only see the email. I'd like to see the document.

25 Q. It's the other exhibit, the same reference. Sorry.

1 15:52 There we go.

2 A. This document was for Al Masah Capital Management Ltd.

3 Q. Can I ask, you were referred to certain parts of this
4 document. Can I ask you to scroll down to page 3 of 13.
5 The box at the bottom there, "Compliance Awareness", do
6 you see that?

7 A. Yes.

8 Q. It says:

9 "Provide information on significant meetings
10 (internal and external) attended by persons involved in
11 the compliance/MLR function."

12 Then you describe basically -- well, in the other
13 box -- the things that relate to that question. Have
14 I got that right?

15 A. Yes, it describes the activities in relation to that
16 question for that period.

17 Q. You talk about regular compliance review meetings held
18 with the SEO and the CFO. And I think you were asked
19 about that yesterday. Then you talk about discussions
20 with the Singapore office and also Abu Dhabi, which
21 I don't think relate to any of the issues we are
22 concerned with any further.

23 Then there is another statement at the bottom of
24 this which you weren't asked about yesterday. Can you
25 just read that to yourself first.

1 15:54 A. Yes, I have read it.

2 Q. Do you recall that at all?

3 A. I can't recall that. I can't recall now. You know, if
4 that's what happened, then that's what I put in the
5 report, but I can't recall that at the moment.

6 Q. You can't recall any of the detail that led you to
7 making that statement?

8 A. No, I can't.

9 Q. Why is it that you would have recorded that there at
10 all?

11 A. Because it would have been recorded there, the process
12 was that all people had to do their annual compliance
13 declarations. That was part of the -- that was an
14 annual compliance exercise that was undertaken. I would
15 have recorded the declarations that would have come back
16 to me and made an observation on the declarations that
17 did not come back to me.

18 Q. Did you regard that as important information to go in
19 this report?

20 A. Yes, I did.

21 Q. The next matter is, you were asked about clients and
22 on-boarding of the clients. Do you recall being asked
23 about those general topics?

24 A. I recall being asked about the general topics, yes.

25 Q. I think what was being suggested to you was that the

1 15:56 investors into these private equity -- my learned friend
2 used the term -- platforms were being on-boarded as
3 clients of Al Masah Capital Management Ltd.

4 MR HILL: No, I didn't suggest that. Just to be clear, that
5 wasn't my suggestion. The witness's evidence is they
6 didn't complete the processes of on-boarding the
7 investors as clients. I was asking her about why that
8 was. I didn't suggest they did.

9 MS CLARKE: All right. Maybe I have misunderstood the
10 thrust of my learned friend's point.

11 But, as I understand it, your answer was that you
12 dealt only with the "know your client" or money
13 laundering aspect of the investors into these funds; is
14 that right? Is that what you said?

15 A. That's correct, yes.

16 Q. It was put to you that -- well, a number of documents
17 were put to you and including -- sorry, an email,
18 I think it was at F405, bundle D.

19 As I recall, there was some questioning about the
20 fact that this was an email exchange between you and the
21 DFSA, with Mr Singhdeo cc'd in, certainly to this email.
22 And there was some confusion about a form you had
23 submitted and whether it had been filled out correctly
24 and the like. Do you recall that?

25 A. Yes.

1 15:59 Q. It culminated in this email that we have here, where you
2 referred to Al Masah Capital Management Ltd having three
3 clients, who have assets under management and you name
4 those; is that correct?

5 A. That's correct, yes.

6 Q. I think the position is, if we were to go to the whole
7 chain, if we go a bit further down to page 2 of 11, this
8 should be an email from you to Jonathan Reid, dated
9 10 October 2013.

10 You say in the second paragraph:

11 "For clarification I am sending you the current
12 Client Master List of clients of Al Masah Capital
13 Management Ltd -- which currently stands at 8."

14 Then you refer in addition we have the three private
15 equity vehicles that you have listed there.

16 Does that accord with your recollection of the
17 information that you pretty consistently provided to the
18 DFSA regarding numbers of clients? Not necessarily the
19 exact number, but certainly a number in that region?

20 A. Yes, yes.

21 PRESIDENT: We have now reached 1 o'clock, Ms Clarke. If
22 you're almost finished, we could go on a couple of
23 minutes, but if not, then I think we'll break.

24 MS CLARKE: I probably will take a little more time than
25 perhaps would be comfortable and I'm conscious that the

1 16:01 witness has been giving evidence for a long time.

2 PRESIDENT: Okay. In which case, we will break now until
3 2 o'clock.

4 Ms Baines, I'm afraid there's yet more to come, but
5 it won't be all that long. I'm sorry you have been
6 troubled.

7 Also, subject to any correction there may be from my
8 colleagues, we are a tribunal in Dubai, we are not in
9 the Lowestoft court, which I think is the nearest one to
10 me. Some of these points, which are very helpful to
11 have, it seems to us could be made by submission on the
12 documents.

13 That applies not just to this witness and to you,
14 Ms Clarke, but also to Mr Hill and the other witnesses.
15 We're not going to take an old-fashioned view about
16 this. If it shortens things, I don't feel that we're
17 going to refuse to listen to points, because except for
18 those that do require an explanation, we're not going to
19 require you to prove to us every single thing, every
20 single document that has been put to every witness who
21 might have something useful to say about that.

22 So, on that point, we'll break now and resume at
23 2 o'clock.

24 Sorry, Ms Clarke, you wanted to say something?

25 MS CLARKE: No, I didn't. I just said, "Understood".

1 16:02 PRESIDENT: Thank you very much.

2 (4.02 pm)

3 (Lunch break)

4 (5.00 pm)

5 MS CLARKE: Sir, over lunch, my team and I, who can
6 certainly take a hint, we have reviewed the remaining
7 matters I was intending to ask Ms Baines about and in
8 light of your comments, it seems to me that those can be
9 dealt with in another way, by way of submissions in
10 reference to documents at a later time.

11 So with that in mind, that's the end of my
12 re-examination and I apologise to Ms Baines that she has
13 been kept waiting over lunch for me to then say that to
14 her.

15 PRESIDENT: That's very kind of you to say that, but
16 actually we haven't asked our questions either, so I'm
17 going to ask Mr Malek and Mr Storey whether they have
18 any questions for the witness.

19 MR MALEK: No questions from me.

20 MR STOREY: No questions from me either. Thank you very
21 much.

22 PRESIDENT: Nor from me, so actually we did -- I'm sorry
23 about that, Ms Baines, but at least you are finally free
24 to go. Thank you very much indeed for all your help.
25 We are most grateful to you for coming to see us.

1 17:01 Thank you.

2 WITNESS: Thank you very much.

3 (Witness withdrew)

4 MS CLARKE: Sir, the next witness is Mr Sikander. As
5 regards the outstanding issue of Mr Hammond's fifth
6 witness statement, I'm pleased to say that we have now
7 had confirmation from the other side that they don't
8 object to that statement going in. And so there's no
9 reason for you not to read it at a time, of course, that
10 suits you. And I'll deal with it when Mr Hammond gives
11 evidence.

12 So I hope that resolves that issue, subject, of
13 course, to any views that you have, once you have read
14 the statement.

15 Not to waste any more of Mr Sikander's time, what
16 I propose to do is go on and call him now, with your
17 leave.

18 PRESIDENT: Thank you very much.

19 MR MALEK: Ms Clarke, can I just ask one question. What we
20 have been asked to do is to put the statement into
21 bundle C and to put the other documents in the bundle,
22 but my understanding is that those documents are already
23 there.

24 MS CLARKE: They are. Those documents are already in the
25 bundle.

1 17:02 MR MALEK: It's only the statement that goes across into the
2 bundle.

3 MS CLARKE: Yes. I think that's being done
4 administratively. Whether it updates on your system,
5 I'm afraid I don't know. But I understand that it's
6 being put on the sort of central repository.

7 MR MALEK: That's fine. Thank you.

8 MS CLARKE: That's the position. I think we have now got
9 Mr Sikander with us.

10 MR SHARIF SIKANDER SHARIF

11 PRESIDENT: Welcome, Mr Sikander. Thank you for sparing the
12 time to come and speak to us.

13 Examination-in-chief by MS CLARKE

14 MS CLARKE: Mr Sikander, you haven't, of course, met me
15 before, given the current conditions. I'm counsel for
16 the Dubai Financial Services Authority, so I'm just
17 going to take you through a few formalities. All right?

18 A. Sure.

19 Q. The first thing I need to get you to do, please, is to
20 repeat the wording of the affirmation which I'm going to
21 read out to you and then ask you to repeat. All right?

22 A. Sure.

23 Q. The wording is as follows. I do solemnly, sincerely and
24 truly declare and affirm that the evidence I'm about to
25 give is the truth, the whole truth and nothing but the

1 17:04 truth. So could you repeat that?

2 A. Sure. I'm just trying to find the wording here. I do
3 solemnly, sincerely and truly declare and affirm that
4 the evidence I'm about to give is the truth, the whole
5 truth and nothing but the truth.

6 Q. Thank you very much.

7 Please could you state your full name, Mr Sikander?

8 A. Sharif Sikander Sharif.

9 Q. I'm going to ask that the witness statement that you
10 have made in connection with this case be brought up on
11 the screen, so that we can all see it.

12 It's C002 and if we could just scroll down, so that
13 we can see the title. That's the "First Statement of
14 Sharif Sikander Sharif". Then if we could scroll down
15 to the signature at the end. Mr Sikander, is that your
16 signature?

17 A. Yes, it is.

18 Q. Are you able to confirm that the content of that witness
19 statement is true, to the best of your knowledge and
20 belief?

21 A. Yes, I confirm.

22 MS CLARKE: That's all I have to ask you at the moment, but
23 there will, I expect, now be some questions from Mr Hill
24 who is the applicants' counsel.

25 Cross-examination by MR HILL

1 17:05 MR HILL: Good afternoon, Mr Sikander.

2 A. Good afternoon.

3 Q. You were the Ernst & Young audit partner dealing with
4 the audit of Al Najah Education Ltd and its
5 subsidiaries; yes?

6 A. Yes, that is true.

7 Q. You also audited Healthcare MENA Ltd; yes?

8 A. Yes.

9 Q. Your clients were in each case Al Najah Education Ltd
10 and its subsidiaries, and Healthcare MENA; yes?

11 A. Yes.

12 Q. They paid your fees and your duties as auditors were
13 owed to those companies; yes?

14 A. Yes.

15 Q. You presented your audit report to the board and audit
16 committee of those companies, ANEL and Healthcare; yes?

17 A. Yes.

18 Q. You refer in your witness statement to a letter of
19 engagement addressed to Al Masah Capital Management Ltd.
20 Can I ask you just to be shown a paragraph in a witness
21 statement from Mr Singhdeo, paragraph 4 of his fourth
22 witness statement, bundle C015.

23 Can you just read that paragraph to yourself.

24 That fairly summarises the position, doesn't it?

25 A. I suppose so, yes.

1 17:08 Q. Indeed, you were asked about this engagement letter in
2 your interview with the DFSA and you explain that
3 Al Masah Capital Management Ltd never engaged you and
4 Al Masah was never your client. That's correct?

5 A. So Al Masah Capital Ltd engaged EY to perform the audit
6 of the companies in the first year that we were
7 appointed.

8 Q. They were never your client. Your client was always --

9 A. Absolutely, absolutely, yes. So the entities that
10 I audited was the Al Najah Education and the Healthcare
11 MENA entities. Al Masah Capital was not my audit
12 client.

13 Q. Exactly. In terms of approving and looking at your
14 audit report and reporting to the board and the audit
15 committee, that was all for ANEL and Healthcare?

16 A. Yes, I was dealing with the individuals, who I suppose
17 were sat or were employees of Al Masah Capital, but they
18 were also directors of the two platforms.

19 Q. I want to ask you about paragraph 14 of your witness
20 statement in the last sentence --

21 A. Sorry, is that going to be put up or shall I put it open
22 there?

23 Q. Hopefully, you have your witness statement in front of
24 you. Feel free to look at your hard copy or wherever
25 you have your witness statement. I'm going to ask you

1 17:09 to look at paragraph 14 and the last sentence where you
2 say:

3 "The disclosure of these transactions is important
4 for the investors to know how much of the money they
5 have invested has been paid out to advisers/placement
6 agents."

7 You're saying there that this disclosure is
8 something that you consider should be in the accounts.
9 And I'm just trying to understand, is that because the
10 premise of that is that investors may not know about
11 these fees at the time they invest?

12 A. It's a requirement of the IFRS, of the applicable
13 standard.

14 Q. You're explaining about what is important about this
15 disclosure and I'm just trying to understand the
16 rationale. Is it you're saying because investors might
17 not know about these fees at the time they invest?

18 A. Absolutely. And this is, if you like, the recognised,
19 shall we say, governance standards when it comes to
20 similar businesses, funds and collective investment
21 schemes.

22 Q. It's fair to say, isn't it, that placement fees are
23 common in the private equity industry; yes?

24 A. Yes.

25 Q. You're aware, aren't you, that it's not a statutory

1 17:10 requirement for these companies to provide shareholders
2 or investors with audited financial statements at all in
3 terms of providing them to investors?

4 A. Sorry, when you say "statutory" -- in reference to what?

5 Q. Cayman law. This is a Cayman company. There's no
6 Cayman requirement to provide --

7 A. I'm not -- sorry, I'm not aware of Cayman island laws,
8 so I can't directly comment on that.

9 Q. Could you be shown exhibit R004 at tab 22.

10 A. Sorry, is that something I have to find myself?

11 Q. No, don't worry. It's going to be put up on the screen.
12 Wait for it to come up.

13 A. Okay.

14 Q. This is a letter from Walkers solicitors to Al Najah
15 Education Ltd entitled, "Disclosure Obligations of the
16 Company", dated December 2015.

17 If Fatima could scroll down so we can see the first
18 two paragraphs. You see there, Walkers say:

19 "You have asked us to provide advice in relation to
20 Al Najah Education Ltd, a Cayman Islands exempted
21 company with limited liability.

22 Specifically, you have asked to advise on the
23 obligations of the company with respect to disclosure of
24 information to the shareholders of the company, in
25 connection with a request from the auditors to the

1 17:12 company to circulate the audited financial statements
2 for the company to the shareholders thereof."

3 You'll see that there's then a list of documents
4 reviewed. Don't worry about that, just scroll down.

5 You're welcome to look at as much of this letter as
6 you like, but I'm going to show you that after
7 "Documents Reviewed", there's a description of the
8 advice, which then sets out the general position under
9 Cayman law, which explains:

10 "As a matter of Cayman Islands law, the obligations
11 of a Cayman Islands company in relation to the provision
12 of information for its shareholders are very limited.
13 The shareholder has the right to receive a copy of the
14 company's memorandum and articles of association and the
15 right to inspect the company's register of mortgages and
16 charges."

17 Then a little lower down:

18 "A Cayman Islands Company does not have any
19 obligation to provide shareholders with any information,
20 as referred to above, unless:

21 1) Otherwise provided for in the Company's
22 memorandum and articles of association.

23 2) The Company has agreed or undertaken to do so.

24 ... Any such agreement or undertaking may be set
25 out in the company's memorandum and articles of

1 17:13 association in the subscription form or similar
2 instrument, pursuant to which the shareholders subscribe
3 to shares in the company or in the relevant offering
4 documentation provided to prospective shareholders."

5 Then if you scroll down, you can see that they
6 review the position in relation to the company,
7 reviewing first the memorandum and articles at
8 paragraph 1, 2 and 3, a subscription form.

9 Scrolling down. On to the next page, they then give
10 their conclusion:

11 "Accordingly, the directors of the Company are under
12 no obligation to provide any information to the
13 shareholders thereof in addition to the information
14 which a shareholder has a right to receive as a matter
15 of law (as summarised under the heading 'General
16 Position') unless the directors resolve otherwise or an
17 order of a resolution of shareholders is passed, in
18 accordance with the relevant provisions of the M&A
19 authorising the same.

20 The right to inspect the accounts, books and
21 documents of the company is a right conferred solely on
22 the directors unless otherwise provided for in the
23 circumstances as set out above."

24 From your own experience and understanding, do you
25 have any basis for disagreeing with any of that?

1 17:15 A. Not with Cayman Island law.

2 Q. You don't disagree that there is in fact no obligation
3 to distribute financial statements at all to the
4 shareholders?

5 A. I'm not aware of what the terms of the investment
6 agreements are, so they may be or may not be under those
7 investment agreements. I can't directly say "yes" or
8 "no", because I'm not aware of it.

9 Q. I understand that. You don't know the terms, so you
10 can't comment on that. But as we have just seen,
11 Walkers have studied those terms and they have given
12 their advice on the question.

13 PRESIDENT: Sorry, but are you still asking the witness
14 about Cayman Islands law or about obligations that might
15 arise separately from Cayman Islands law?

16 MR HILL: Well, the advice we have just seen from Walkers
17 deals with Cayman Islands law advice, arising not only
18 as a matter of general law, but also as a matter of the
19 investment terms to which shareholders subscribe.

20 My question to the witness is: is he aware from his
21 perspective of any obligation to provide shareholders
22 with the financial statements of the company at all?

23 PRESIDENT: Thank you.

24 A. As I responded, I'm not aware of what the legal
25 provisions are under Cayman Islands law. And I can't

1 17:16 remember if there's anything in the investment
2 agreement. I can't remember, frankly, whether there's
3 anything in there. But if this is what Walkers are
4 saying, and that's their opinion, then that's it,
5 I guess.

6 MR HILL: That's fine. Let's assume that there is no
7 obligation, as a matter of Cayman law, to provide
8 financial statements to shareholders. I'm not asking
9 you to delve further into Cayman law, just assume that
10 with me.

11 A. Okay.

12 Q. It would have been open to the platform companies,
13 wouldn't it, to give information to investors that was,
14 in a sense, a summary, summarised financial information;
15 yes?

16 A. I suppose so, yes.

17 Q. If a company is not obliged to give shareholders
18 financial statements at all, it can choose to give them
19 summarised financial information; yes?

20 A. Yes, I suppose so.

21 Q. When you say, just looking at paragraph 37 of your
22 report -- your witness statement, I should say.

23 A. Sorry, 37, did you say?

24 Q. Yes.

25 A. Yes.

1 17:17 Q. You're dealing there with whether Ernst & Young would or
2 would not have approved a reproduction of the financial
3 statements. Just so I understand what you're saying is
4 if they produce something, which purported to be
5 a reproduction of your financial statements, that you
6 wouldn't approve them unless they were a faithful
7 reproduction, you're not saying there that it wouldn't
8 have been open to the company just to produce its own
9 summary presentation?

10 A. If they were to use the financial statements that we
11 issued, then we would have to be -- advised of that.
12 And as auditors, we have to proceed as we would have to
13 perform to confirm the information that was being
14 shared.

15 Q. Can we deal with the sequence of events that relate to
16 the correction process. You'll recall that Ernst
17 & Young required a corrective letter to be put out to
18 the shareholders --

19 A. Sorry, can I just go back to the previous point as well.
20 When it comes to distribution of financial information
21 from the financial statements, if they are reproduced in
22 any form, we are required to be notified of that as
23 well.

24 So it doesn't necessarily have to be an identical
25 copy of the statements. If the basis of the reproduced

1 17:19 information is the financial statements, that we have
2 issued, we would need to be notified of that. I just
3 want to be clear.

4 Q. Where does that requirement arise?

5 A. It's in our terms of engagement.

6 Q. We can look at those for ourselves.

7 Can we deal with the sequence of events relating to
8 the correction process in respect of the ANEL annual
9 report, where Ernst & Young required a corrective letter
10 to be sent out to shareholders. You know what I'm
11 talking about?

12 A. Yes.

13 Q. Just so I get the sequence of events, there was an ANEL
14 report which had been sent out to ANEL shareholders;
15 yes?

16 A. You mean the financial report?

17 Q. Yes, exactly, an annual report which included financial
18 information that had been sent out; yes?

19 A. Yes.

20 Q. You, as Ernst & Young, wanted ANEL, Al Najah Education,
21 to correct the information that they had provided to
22 their shareholders; yes?

23 A. Yes.

24 Q. You had a meeting with Mr Singhdeo and Mr Lim on
25 23 November 2015; correct?

1 17:20 A. Yes.

2 Q. That was a meeting with them in their capacity as
3 representatives of ANEL, Al Najah; correct?

4 A. Correct.

5 Q. You then sent a letter on the same day and you describe
6 that at paragraphs 42 to 44 of your witness statement
7 and you exhibit the email. Can we have a look at it?
8 It's at bundle F307.

9 You say at paragraph 1:

10 "We require you to write to the shareholders of
11 Al Najah Education Limited intimating that you are
12 seeking to withdraw the annual reports for the years
13 ended 2013 and 2014 which were distributed to them due
14 to material omissions in the financial statements
15 included in the annual reports and as such those
16 financial statements should be considered erroneous. As
17 discussed, the letters should have space for the
18 shareholder to acknowledge and the shareholder should be
19 requested to return the signed letter directly to EY.
20 With would be happy to review the draft wording if you
21 require assistance."

22 You were not in this letter prescribing exactly the
23 words that should be used. What you were saying is what
24 should be intimated by the letter that came from
25 Al Najah; correct?

1 17:21 A. Not particularly in this email, but when we met them and
2 had a discussion, we had agreed that we'd have to review
3 the wording that they were going to be releasing.

4 Q. That's not right. I'm not trying to trap you. Just
5 look carefully, because if you look at the end of that
6 paragraph, what you're in fact saying in this letter is
7 that you would "be happy to review the draft wording if
8 you require assistance".

9 A. Yes.

10 Q. In other words, you were volunteering that you weren't
11 requiring sight of the draft, were you?

12 A. If you read that sentence in isolation, perhaps, yes.

13 Q. That's one point. The other point is the one I started
14 with. You weren't telling them exactly the words they
15 should use or precisely what they should say. You were
16 telling them the message that should be intimated, using
17 your word, by the letter; correct?

18 A. Again, not specifically mentioned in that email, yes.
19 But in the subsequent forum of discussion and meeting.

20 Q. You gave a deadline of Thursday of that week. Sorry,
21 you have to scroll down to see that. This letter is
22 sent on the evening of the Monday and you see there at
23 the end of the letter, you give a deadline of Thursday
24 of that week for the responsive, for corrective action;
25 correct?

1 17:23 A. Correct.

2 Q. Following morning, Mr Lim sent you his draft. We have
3 that at exhibit 722.

4 Mr Lim has taken up your invitation to review the
5 letter, hasn't he, by sending you a draft? Yes?

6 A. Yes.

7 Q. He's explaining -- sorry, Fatima, could you just scroll
8 a bit further down, so that Mr Sikander can see the
9 whole email.

10 He's saying:

11 "After consultation with the management here, please
12 find attached the wordings for the letter to
13 shareholders which we would propose to send to
14 investors. Its attached for your review and consent and
15 we can agree on the ending acknowledgement letter which
16 you would require to be sent and requested to be sent
17 back to EY directly.

18 Furthermore, for total clarity to investors, we
19 would like to attach the signed financial statements as
20 part of this letter to investors. Do let us know if
21 this can go as part of the package."

22 So he's making clear in his letter that this is the
23 draft they propose to send to shareholders. And he says
24 he intends to attach the signed financial statements for
25 total clarity to investors. Do you see that?

1 17:25 A. Yes, I can see what's written in the email.

2 Q. If you then scroll down to page 4 of this clip, we have
3 here his draft letter. And I'm sure you remember it,
4 but if Fatima could just scroll down through the letter,
5 through the draft, to remind you of what the letter
6 looked like.

7 It's right to say, isn't it, that however the errors
8 were described, the letter made clear that the errors
9 were in notes 7 and 10 of the financial statements. And
10 Mr Lim proposed to set out the erroneous note and the
11 actual note in full for shareholders; correct?

12 A. I can see what is presented in front of me, but I can't,
13 at this point in time, confirm that it was exactly as it
14 was meant to be in the financial statements. That it
15 matched the financial statements that were --

16 Q. I understand that, I'm not going to ask you to undertake
17 that comparison, because we can do it. You'll have to
18 take it from me that what he's doing here is setting out
19 the full version of note 7 and note 10 of both the
20 erroneous and the correct version; yes?

21 A. Yes.

22 Q. You have to take it from me that that's accurate. What
23 he's then doing is providing the full note. And also,
24 as we saw in the covering email, proposing to send the
25 full signed financial statements; yes?

1 17:27 A. Yes.

2 Q. Although I understand EY not to be happy with the
3 description as printing errors, in fact, the reader of
4 this letter has the full versions of both the erroneous
5 and the correct note of the accounts. And indeed, the
6 final version of the financial statements themselves;
7 correct?

8 A. I guess they have two versions of the same note, yes.

9 Q. Mr Lim was providing you with this draft, which he
10 didn't have to do and was giving you an opportunity to
11 comment; correct?

12 A. No, we did that, as I mentioned, when we had the
13 meeting, we made it very clear that we wanted to review
14 the letter and agree on the wording. And there was
15 a review process on it that involved myself and the
16 Dubai managing partner, Mr Joe Murphy. So there
17 was a review --

18 Q. As I say, I suggest there must be an element of
19 misrecollection on your part, because your letter to the
20 company in fact makes it very clear that they don't have
21 to present you a draft of this letter, but you're there
22 to assist if they want you to assist. You see that from
23 your letter?

24 A. Going by what's in the letter. I'm going by what
25 I was -- also what was discussed and stated in the

1 17:28 meetings, which I attended along with Mr Joe Murphy.

2 Q. You received Mr Lim's draft on the morning of Tuesday,

3 24 November with a deadline expiring on Thursday 26th.

4 It's right to say that EY didn't get back to the company

5 before close of business, normal office hours, on

6 Thursday 26th?

7 A. No, we did. There was email correspondence exchanged on

8 the wording.

9 Q. That email correspondence from you came in at 7.45 pm on

10 Thursday 26th, didn't it?

11 A. Frankly, I don't remember, if you can present the email

12 to me, I'll be able to see it. Or I'll take your word

13 for it.

14 Q. Exhibit F312. I was incorrect. Not 7.45, 7.43 pm. Do

15 you see that?

16 A. Okay.

17 Q. This is your response to Mr Lim in connection with the

18 draft he had sent to you on the Tuesday morning; yes?

19 A. Yes.

20 Q. Are you aware that by the time the company had received

21 that draft, so at 7.43 pm, just over an hour earlier, at

22 6.26 pm, the company had sent out its version, its own

23 version of a letter to shareholders?

24 A. I was not aware of that. That was not something that

25 was discussed.

1 17:30 Q. When we look at paragraph 46 of your witness statement,
2 it refers to -- you say:

3 "I have since become aware that the rejected letter
4 had already been emailed to investors at the time I sent
5 this email to Mr Singhdeo."

6 When you say "the rejected letter", of course that
7 letter was not a rejected letter at the time it was
8 emailed to investors, because the rejection from you
9 didn't come in until after the email had been sent?

10 A. But it's still rejected. We did not agree on
11 a timetable as to when they would send the letters out
12 to the -- we wanted the matter agreed by that time and
13 we had email correspondence, and it was very obvious
14 that there was disagreement over the wording.

15 Q. You had given them a deadline of Thursday to take
16 corrective action and you had volunteered to look at
17 a draft, and by the time we got to the close of business
18 on Thursday, hadn't come back on a draft, your own
19 deadline that you had imposed was expiring. That's
20 a fair summary, isn't it?

21 A. I mean, if you define the deadline the way you do,
22 I suppose, yes.

23 MR HILL: Thank you, Mr Sikander. There may be some
24 questions from the tribunal or from the DFSA.

25 MS CLARKE: I have no re-examination. Thank you, sir.

1 17:32 PRESIDENT: Mr Malek, Mr Storey?

2 MR MALEK: Nothing from me.

3 MR STOREY: And nothing from me, thank you.

4 PRESIDENT: Mr Sikander, thank you very much indeed for your
5 help and for sparing the time. We are most grateful to
6 you. You're free to go and to switch off now.

7 Thank you.

8 (Witness withdrew)

9 PRESIDENT: Next witness?

10 MS CLARKE: Mr Hammond, please.

11 MR MATTHEW HAMMOND

12 PRESIDENT: Thank you for coming to see us. Ms Clarke is
13 now going to deal with the formalities.

14 Examination-in-chief by MS CLARKE

15 MS CLARKE: Mr Hammond, first of all, can I ask you please
16 to repeat the wording of the affirmation. Do you
17 actually have a copy of it in front of you?

18 A. I'm afraid I do not.

19 Q. That's all right. I'll take it in two parts, then.

20 I do solemnly, sincerely and truly declare and affirm.

21 A. I do solemnly, truly, sincerely declare and affirm.

22 Q. Let's start that one again. I do solemnly, sincerely
23 and truly declare and affirm.

24 A. I do solemnly, sincerely and truly declare and affirm.

25 Q. That the evidence I am about to give is the truth, the

1 17:34 whole truth and nothing but the truth.

2 A. That the evidence I am about to give is the truth, the
3 whole truth and nothing but the truth.

4 Q. Thank you very much.

5 Could you please confirm your full name?

6 A. Matthew David Hammond.

7 Q. Mr Hammond, you have made a grand total now of five
8 witness statements in this case?

9 A. That's correct.

10 Q. Do you have copies of all five of them in front of you?

11 A. Yes, I do.

12 Q. I'm going to bring all five of them up, just for the
13 formalities, but I think that statement 1 won't concern
14 us very much. Statement 1 is on the screen already.
15 Can we just scroll down, so we can see the title, to
16 confirm that. Then to the signature page.

17 Is that your signature, Mr Hammond?

18 A. It is.

19 Q. Statement 2 is I think C005. Can we just see the title
20 and then scroll down to the signature.

21 Is that your signature, Mr Hammond?

22 A. It is.

23 Q. Witness statement 3, which is C013. Again, can we just
24 quickly look at the title and then scroll down to the
25 signature.

1 17:36 Is that your signature?

2 A. It is.

3 Q. Witness statement 4, C014. Scroll down to the
4 signature, please.

5 Is that your signature?

6 A. It is.

7 Q. Lastly, witness statement 5, C018. If we could scroll
8 down to the signature.

9 Is that your signature?

10 A. Yes, it's my signature.

11 Q. Thank you very much. As regards all five of those
12 witness statements that you have just identified, is the
13 content of each one true, to the best of your knowledge
14 and belief?

15 A. It is.

16 MS CLARKE: If you could wait there, please, there may be
17 some questions for you from Mr Hill.

18 Cross-examination by MR HILL

19 MR HILL: Mr Hammond, you explain in, I think, your third
20 witness statement that you were the officer in charge of
21 the DFSA's investigation into Al Masah and you had
22 day-to-day carriage of the investigation?

23 A. That's correct.

24 Q. Sorry, I think I should have said second. Anyway, it's
25 right, yes?

1 17:37 A. Yes, that's right.

2 Q. You deal in that witness statement with certain matters
3 relating to Regulus, who became the investment manager.
4 And you appreciate, don't you, that none of the
5 allegations being litigated before this tribunal now
6 concern Regulus; yes?

7 A. Yes, that's correct.

8 Q. If the DFSA were to consider the activities of Regulus
9 gave rise to a contravention of DIFC financial
10 regulations within its jurisdiction, it's of course open
11 to it to take steps in that regard; yes?

12 A. Yes, that's right.

13 Q. I'm not going to ask you further questions about those
14 aspects of your evidence, then.

15 On the evidence you give, at paragraph 88 of your
16 second witness statement, you make a statement about
17 whether or not Mr Dash's evidence in interview was
18 corroborated by evidence from investors.

19 Just as I understand it, that's intended to be
20 a comment on the content of the interviews that we have
21 in the bundle, which we can read for ourselves; yes?

22 A. Yes, so that's a comment on the interviews that were
23 conducted with investors after Mr Dash's second, I think
24 it was, interview.

25 Q. You're not seeking by your comment to adduce anything --

1 17:39 evidence of anything other than the contents of the
2 interviews; yes?

3 A. No, that's correct.

4 Q. You also deal in your witness statement with some of the
5 responses by the applicants to the DFSA's investigation
6 which, in your witness statement, you suggest amount to
7 non-cooperation. It's right to say, isn't it, that if
8 the DFSA considered that the applicants had breached
9 their duty to cooperate with the regulator, that could
10 have been made the subject of an allegation; yes?

11 A. Yes, and that was considered.

12 Q. And you appreciate that it hasn't been, that there are
13 no allegations of non-cooperation being considered by
14 this tribunal; yes?

15 A. That's correct.

16 Q. You're aware that the DFSA in its answer document from
17 this appeal has made clear that the DFSA does not allege
18 the applicants have been unco-operative?

19 A. I'm aware that that's in that document yes.

20 Q. It's right to say, isn't it, that when it came to the
21 response to the investigation, Al Masah DIFC, their
22 position was that they were willing to comply with the
23 request for documents, but that an issue arose to the
24 extent that the requested documents, that are property
25 of what we have called the holding companies, giving

1 17:40 rise to conflict between the company's duty to the DFSA
2 and the obligations of confidentiality to the holding
3 companies, which could result in criminal sanction.

4 Yes?

5 A. That was the position that they put to us, yes.

6 Q. It's also right to say that one of the other concerns
7 raised, related to your interview of people outside the
8 DIFC, the concern being that you may not have the power,
9 the ability to keep the content of the discussions
10 confidential --

11 A. I'm sorry, sir, you're fading out.

12 PRESIDENT: Mr Hill, you are fading out. If you could
13 perhaps do what you did this morning to put it right.
14 Thank you.

15 MR HILL: Yes. Okay, I'll try again.

16 It's right to say that one of the other concerns
17 raised related to your interviews with persons outside
18 the DIFC, the concern being that you may not have the
19 power, the ability to keep the content of your
20 discussions confidential and that that could be damaging
21 to the private equity business?

22 A. They did raise that, yes.

23 Q. It's a fair summary, isn't it, the matters that you now
24 suggest amounted to obstruction, reflected concerns
25 explained in detail at the time by Al Masah DIFC and

1 17:41 indeed supported with external legal advice; yes?

2 A. It's correct to say that they failed to produce the
3 documents and that they relied on the issues that they
4 raised with us by way of explanation of that failure to
5 produce the documents.

6 Q. You recently swore a fifth witness statement, which we
7 received today. And you exhibit to that witness
8 statement an email of Ms Benseghir, which explains,
9 amongst other things, that two copies of the Ernst
10 & Young corrective letter were included in the courier
11 pack sent out to every investor in November 2015; yes?

12 A. Yes.

13 Q. You were presumably involved, as case officer, in
14 putting together material to be shown to Ms Zudikova for
15 her to produce her witness statement; yes?

16 A. Yes, that's correct.

17 Q. Can we have a look at paragraph 41 of Ms Zudikova's
18 witness statement, bundle C001. Ms Zudikova said in her
19 witness statement that:

20 "The courier packs included the letter provided by
21 Mr Lim and the copies of the ANEL financial statements
22 for the financial years ending 31 August 2013 and 31
23 August 2014."

24 We heard from Ms Zudikova, she could not assist from
25 her recollection about what was finally included in the

1 17:43 pack as it had gone to investors. Do you recall hearing
2 her evidence on that?

3 A. Yes, I do.

4 Q. I just want to ask you how it came to be that when you
5 were assisting Ms Zudikova with documents, showing her
6 documents leading to her making this statement about
7 Mr Lim's letter being in the courier pack, how it came
8 to be that she wasn't also saying that the two versions
9 of the corrective letter that EY required were included
10 in the courier pack, which is apparent from the email
11 from Ms Benseghir you just exhibited?

12 A. Certainly. So I recall from Ms Zudikova's evidence
13 yesterday that she was on leave on the weekend that
14 these courier packs were assembled, and it was Ghita and
15 another employee at Al Masah that physically assembled
16 the bundles. And, in fact, the printing of the letters
17 hadn't finished.

18 So when we were compiling Ms Zudikova's witness
19 statement and assisting her with the documents that she
20 would produce, we only went as far as documents that she
21 had physically seen going in or being prepared for the
22 packs and that coincided with the email that had been
23 sent by Mr Lim, who instructed her to only put in his --
24 sorry, the letter that he provided with his email and
25 the two copies of the financial statements.

1 17:45 We know that later other documents were added to the
2 pack. But for the purposes of Ms Zudikova's witness
3 statement, I didn't think that she could state directly
4 that she saw the other two letters, the two Ernst
5 & Young letters that we know were in the pack being put
6 in, because she wasn't present when that process was
7 completed.

8 Q. She does deal in her witness statement at paragraph 42
9 with events that happened after she wasn't available.
10 The overall impression given by her statement was that
11 the only thing in the courier pack was Mr Lim's letter.
12 Then the document showed quite clearly that two versions
13 of the Ernst & Young corrected letter were included in
14 the pack to shareholders. That's correct?

15 A. That's correct. I'm not sure that she meant to give the
16 impression that those were the only documents in the
17 pack. But those were the ones that she was instructed
18 to put in the pack.

19 Q. Did you show her this email that you exhibited?

20 A. No, I did not.

21 Q. Can I ask you one more question about the witness
22 statement that we received today. Can you look at
23 paragraph 6. This deals with the annex D.

24 A. Yes.

25 Q. Where you say:

1 17:46 "On 28 January 2016, an employee of KBH Kaanuun hand
2 delivered the DFSA a USB drive containing the documents
3 they say meet item 4.10 of the 2015 notice."

4 A. Yes.

5 Q. When you refer to the documents that they say meet item
6 4.10 of the 2015 notice, that's a reference, is it, to
7 something in KBH's letter that you refer to in that
8 paragraph?

9 A. It was the only thing that was produced on that day and
10 when KBH produced material to us, they had -- I think
11 I reference it in the fifth statement, they had
12 a control document, which highlights what the material
13 being produced is. And this is the first occasion where
14 they have responded to the information that was
15 requested at 4.10.

16 Q. When you look at KBH's letter and you exhibit it at
17 exhibit F531.

18 Just scroll down. I want to look at the bottom of
19 page 2. Do you see under the "Production Request", KBH
20 say to you:

21 "We have delivered a USB drive to your offices
22 today, which contains documents relating to the NG
23 Companies [non-group companies]. These documents
24 include (where applicable) current and past subscription
25 forms, current and past investor presentations, current

1 17:49 memorandum and articles, quarterly updates to investors
2 and all financial statements in our client's possession.
3 These documents are all already with the DFSA. They are
4 either on the server, attached to emails or contained on
5 Salesforce."

6 A little further down, you see about five paragraphs
7 further down, it says:

8 "We ask that you complete your review of the
9 material that has already been provided. That material
10 includes all of the documents that our client has in
11 respect of the NG Companies."

12 What KBH is saying to you is, "Here is a dump of all
13 the documents that we have in relation to what our
14 clients have in relation to the non-group companies."
15 Yes?

16 A. That is an interpretation of that paragraph. What was
17 on the USB, however, was only the marketing documents,
18 which did include some of the items they identify in
19 that paragraph.

20 Q. It also said that it includes memorandum and articles.

21 A. That wasn't on the USB.

22 Q. What is apparent from the description of what's been
23 given to you by KBH, is that what they're providing
24 doesn't assist on the question of what, if any,
25 unapproved documents there were, which were actually

1 17:50 used by the company for marketing; correct?

2 A. Correct.

3 Q. Can I deal with the investigation itself. You're aware,
4 aren't you, that one of the points made by the
5 applicants is that the structure and operation of the
6 business was apparent to and reviewed by the DFSA on
7 numerous occasions over the years? And that, at no
8 stage, did the DFSA raise any concerns along the lines
9 of the allegations now being made.

10 By "structural allegations", just so you're clear,
11 I'm sure you appreciate this, I'm referring to
12 allegations such as that there were collective
13 investment funds, Al Masah Cayman was engaged in
14 promoting funds, that it was arranging in the DIFC or
15 acting as a fund manager for the DIFC.

16 So you're aware that that's our position?

17 A. Yes, I am.

18 Q. I would like to ask you whether your investigation
19 extended to you reaching an understanding of what the
20 DFSA itself understood and thought about the business on
21 those sorts of points as a result of its various reviews
22 and inspections at the time?

23 A. We spoke with supervision staff at the beginning of the
24 investigation to get an understanding of the company.
25 There was discussions around what they presented to the

1 17:52 DFSA as their business and that was primarily looking at
2 the kind of clients that Al Masah DIFC was reporting to
3 us each year. That was a figure of between, I think, 8
4 and 13 clients, that the supervision's view -- and I'm
5 not an officer of the supervision department, this is my
6 recollection of discussions with them on these points --
7 was that the clients were predominantly Al Masah Cayman
8 and some other companies associated with Al Masah
9 Cayman. And then four or five high net worth
10 individuals for whom Al Masah DIFC was running
11 a portfolio of private investments.

12 Q. You must have concluded, as a result of your
13 discussions, that the DFSA were aware that private
14 equity structures were not being treated by the company
15 as foreign funds and not notified to the DFSA as foreign
16 funds; correct?

17 A. No, that's not something that we -- I recall discussing
18 with supervision.

19 Q. So you didn't discuss with supervision its own
20 understanding about the treatment of the private equity
21 businesses which were notified to them as foreign funds?

22 A. Sorry, so with respect to one fund that I recall, it was
23 based in Luxembourg, we were aware of --

24 Q. That was recognised as a foreign fund. We saw that this
25 morning.

1 17:54 You presumably concluded that the DFSA did
2 understand that the company was marketing the private
3 equity businesses, but that they were not being notified
4 to the DFSA as foreign funds?

5 A. So for the private equity funds, I assume we're
6 referring to the likes of Al Najah and Avivo.

7 Q. That's right.

8 A. It's correct to say that those weren't notified to the
9 DFSA as foreign funds and we became aware during the
10 course of the investigation that Al Masah was marketing
11 those funds.

12 Q. But the DFSA, you must have concluded, were already
13 aware that Al Masah was marketing those structures from
14 the reviews it had done and the filings submitted?

15 A. No, not from the reviews that it had done. That was the
16 position that I arrived at, because of the
17 communications that I reviewed during the course of the
18 investigation.

19 Q. There's nothing in that that wasn't apparent from the
20 regulatory business plan filed with the DFSA, was there?

21 A. Again, I'm not a supervision officer. I can't say what
22 was in the minds of supervision when they reviewed that
23 document, when it was first filed with the DFSA.

24 Q. Isn't the reality, as happened here, there's a different
25 stance between enforcement, who are suggesting that

1 17:55 these are funds being marketed by Al Masah DIFC, and
2 supervision, at the time, who knew about the activities,
3 did not consider there to be any non-compliance?

4 A. I don't agree that supervision did know about those
5 activities. Again, I'm not a supervision staff member.
6 I can't say what was in their minds. All I can say is
7 it was related to the discussions that we had with
8 supervision, which was that they were dealing with the
9 firm, as it appeared on the papers, which was a firm
10 that was providing advisory services to Al Masah Caymans
11 and the portfolio asset management services to the high
12 net worth individual clients that they had at the time.

13 Q. I'm not going to spend much further time on this. But
14 it was, in fact, you must have seen from the documents
15 you yourself reviewed, the DFSA were also told about
16 marketing distribution services to the private equity
17 structures. In other words, the investors' known
18 structures.

19 A. No, I can't agree to that, I'm afraid.

20 Q. You interviewed Ms Baines twice; correct?

21 A. That's correct.

22 Q. Once in April 2016, once in September 2017. Both those
23 interviews were conducted after the scope of the
24 investigation had been extended, concerns about whether
25 Al Masah Cayman was engaged in providing financial

1 17:57 services without authorisation; yes?

2 A. Yes, that's correct.

3 Q. You didn't suggest, at any stage, to Ms Baines that the
4 way in which the business was structured or conducted
5 might result in the contravention of DIFC legislation?

6 A. I don't believe I did, no.

7 Q. None of the arguments now raised by the DFSA regarding
8 breaches of the collective investment law were raised
9 with Ms Baines, were they?

10 A. They were not.

11 Q. Or any argument to the effect that Al Masah Cayman was
12 in contravention of DIFC law by making financial
13 promotions or arranging deals in investments or acting
14 as fund manager in or from DIFC?

15 A. I don't believe so, no.

16 Q. You didn't canvass Ms Baines' views whether she
17 understood the operations and the structures to be
18 compliant in those respects?

19 A. I believe that was part of the original interview plan
20 for Ms Baines, but during the course of the interview,
21 it was clear that she had very limited information on
22 the structure of the entities.

23 Q. We have discussed things with Ms Baines. And I would
24 suggest it's clear that that's not the case and that it
25 was part of her job, and she achieved her job, reaching

1 17:58 an understanding of what the structure of the company
2 was. Did that occur to you when you interviewed her?

3 A. No, the focus of the interview with Ms Baines was to
4 understand the compliance function of Al Masah DIFC and
5 for the second interview, the process for reviewing
6 marketing materials.

7 Q. Given that the allegations that the DFSA then brought
8 forward, involved these breaches of regulation, arising
9 from a structure, in your case, which was within her
10 sphere of reference, as compliance officer, wasn't it
11 important to ask her what her position was in these
12 alleged contraventions?

13 A. No, I don't believe it was at that point in the
14 investigation. We were focused on the communications
15 with investors and the information that was sent out,
16 but the structure of the funds was not something that
17 I considered necessary to raise with Ms Baines.

18 Q. Even though you were bringing forward allegations that
19 other people in management were knowingly concerned in
20 these contraventions, they are her area, you didn't
21 consider it necessary even to discuss that with her?

22 A. That's correct.

23 MR HILL: Thank you, Mr Hammond.

24 PRESIDENT: Ms Clarke, do you have any questions for
25 Mr Hammond?

1 17:59 MS CLARKE: Sir, may I ask for a five-minute break, so that
2 I can just raise one matter with those who instruct me.

3 PRESIDENT: Yes, of course. We would be having
4 a five-minute break now anyway. So we'll break now and
5 start again in five minutes. Thank you.

6 (6.00 pm)

7 (Short break)

8 (6.06 pm)

9 MS CLARKE: I have had the discussion that I needed and
10 I won't have any re-examination for Mr Hammond.

11 PRESIDENT: Did we have -- Mr Malek and Mr Storey, do you
12 have any questions for the witness?

13 MR MALEK: Nothing from me.

14 MR STOREY: Nothing from me either. Thank you.

15 PRESIDENT: Mr Hammond, I have no questions either. Thank
16 you very much indeed for your help. We're most grateful
17 to you.

18 (Witness withdrew)

19 MS CLARKE: Sir, that concludes the live witnesses to be
20 called on behalf of the Dubai FSA.

21 PRESIDENT: Thank you very much.

22 Mr Hill?

23 MR HILL: I call Mr Dash.

24 Could I just explain, when Mr Dash comes on, Mr Dash
25 is in a room, he has the partner from KBH, Mr Singh,

1 18:07 who's in the room, being a client rather than being
2 a witness. Mr Dash does have a copy of, if not the
3 trial bundle, certainly the D bundle, the exhibits to
4 the trial bundle. And our proposal is that Mr Singh
5 provides him with copies of the exhibits at the same
6 time as they are called up. And obviously other than
7 that, it will be as normal.

8 PRESIDENT: Well, I have no objection to that. Does anybody
9 have one?

10 No, that is fine by us.

11 MS CLARKE: No objection.

12 MR SHAILESH KUMAR DASH

13 PRESIDENT: Mr Dash, welcome. Thank you for coming to see
14 us and for giving evidence to us. Mr Hill will now do
15 the formalities and perhaps ask you some questions.

16 Examination-in-chief by MR HILL

17 MR HILL: Mr Dash, could you give your full name to the
18 tribunal?

19 A. Shailesh Kumar Dash.

20 Q. You've chosen to give an affirmation. Can you repeat
21 after me. I do solemnly, sincerely and truly declare
22 and affirm.

23 A. I do solemnly, sincerely, truly declare and affirm.

24 Q. The evidence I'm about to give.

25 A. The evidence I'm about to give.

1 18:08 Q. Is the truth, the whole truth and nothing but the truth.

2 A. The truth, the whole truth and nothing but the truth.

3 Q. And you made three witness statements, substantive
4 witness statements in these proceedings. Can I ask they
5 be brought up on the screen. First is at C009. I hope
6 you have also got a copy of your witness statements in
7 front of you any way in hard copy.

8 A. Yes.

9 Q. Can I ask Fatima to scroll down so we see the front of
10 the witness statement and Mr Dash's signature page at
11 page 20. Is that your signature?

12 A. That's correct.

13 Q. Is the content of that statement true?

14 A. It's true.

15 Q. Can we go to your third witness statement, which is at
16 bundle C010. That says your third witness statement,
17 Mr Shailesh Kumar Dash. Can we now go on to page 40 of
18 that document. Is that your signature?

19 A. Correct, my signature.

20 Q. Are the contents of that statement true?

21 A. That's correct.

22 Q. Then can we go to your fourth witness statement, C016.
23 You see there "Fourth Witness Statement of Shailesh
24 Kumar Dash"?

25 A. Yes.

1 18:10 Q. Go to page 8. Is that your signature?

2 A. That's correct.

3 Q. Are the contents of that statement true?

4 A. That's correct, that's true.

5 Q. If you wait there, Ms Clarke will have some questions
6 for you.

7 A. Thank you.

8 Cross-examination by MS CLARKE

9 MS CLARKE: Mr Dash, you would agree, wouldn't you, that it
10 is important to comply with DFSA rules and regulations?

11 A. Very much.

12 Q. At the time that we are concerned with, you were the
13 SEO, which stands for senior executive officer, and
14 licensed individual of Al Masah Capital Management Ltd,
15 which was a DFSA authorised firm, weren't you?

16 A. That is true, till April 2016.

17 Q. Exactly. But that was the position during the period
18 that we're concerned with, for the purposes of this
19 case, wasn't it?

20 A. Yes.

21 Q. An SEO is a senior position; would you agree with that?

22 A. That's correct.

23 Q. A licensed individual, of course, requires certain
24 obligations that you owe directly and to the company and
25 to the DFSA; do you agree?

1 18:12 A. That's correct.

2 Q. Of course, what you understand, then, is that that means
3 that there is an obligation on you to comply with DFSA
4 rules, so it's not just the company, it's you as well?

5 A. Very true.

6 Q. And an obligation to make sure that the Al Masah Capital
7 Management Ltd did the same?

8 A. That is correct.

9 Q. And, of course, an obligation to ensure that any other
10 company that you were involved with didn't breach DFSA
11 rules or regulations; do you agree with that?

12 A. I agree.

13 Q. In addition to all of those things, you also have an
14 obligation, don't you, as a result of your licence
15 status, to be fit and proper. You understand that term?

16 A. Yes, fit and proper and uphold the values of DFSA.

17 Q. Exactly. And "fit and proper" is a term that's used
18 specifically by the DFSA and one of the requirements to
19 be fit and proper is to act with high standards of
20 integrity?

21 A. Very true.

22 Q. Also, fair dealing?

23 A. True.

24 Q. It would follow, wouldn't it, from what I have just
25 asked you, that those things would plainly include an

1 18:13 obligation not to mislead or deceive, wouldn't it?

2 A. I think they go together, yes.

3 Q. Or, for that matter, to be party to misleading or
4 deceiving conduct by other people?

5 A. I think that's a bit different, I think that's a legal
6 term. I would let you to decide.

7 Q. If you were aware of misleading or deceiving conduct by
8 other people connected with, let's say, Al Masah DIFC,
9 would you consider that that was a matter that might
10 call into question their integrity?

11 A. Very much.

12 Q. If you were a party to that, by way of aiding or
13 abetting it, or being aware of it and condoning it,
14 whether by act or omission, do you consider that that
15 might at least call into question your integrity?

16 A. If that's the case, yes.

17 Q. As much as the obligation not to mislead or deceive
18 would fall on you, as an individual, it would fall on
19 the company, wouldn't it, Al Masah DIFC?

20 A. I think the company and individuals are different. But
21 again, I think this is a legal terminology or how does
22 that flow into each other, I'll leave that for you to
23 decide.

24 Q. But do you consider that part of your role was to ensure
25 that Al Masah DIFC, for example, did not engage in

1 18:15 misleading or deceptive conduct?

2 A. No, Al Masah DIFC never did that.

3 Q. No, I'm not asking whether they did or they didn't.

4 What I'm asking is, would you consider it part of your
5 role in that firm to ensure that they didn't engage in
6 misleading or deceptive conduct as a firm?

7 A. That's correct, along with my management team and my
8 compliance officer.

9 Q. And for that matter, the same question as regards
10 Al Masah Cayman?

11 A. Al Masah Cayman is a different entity, yes. It is
12 a holding company which owns 100 per cent shareholding
13 of the DIFC entity. It had no activity apart from
14 holding or signing agreements with different
15 institutions. As the role was that of only the DIFC
16 entity here in DIFC.

17 Q. We'll come on to all of that. But as part of your role
18 at Al Masah Cayman, would you consider it important to
19 ensure that that company did not engage in misleading or
20 deceptive conduct, regardless of whether it technically
21 did or didn't breach DFSA rules? It would breach
22 conduct of good business --

23 A. My role along with the board, yes.

24 Q. In achieving all of those things, a lot has to do with
25 the corporate ethos of the company, doesn't it?

1 18:17 A. It does.

2 Q. You had set out at length your credentials in the
3 business community over many years, and you've had
4 a good deal of experience of senior roles in a lot of
5 companies, haven't you?

6 A. I did. Senior roles -- senior role, before this, and
7 only one more company. Before that, I used to work in
8 junior roles.

9 Q. Anyway, as a result of your many years of experience,
10 you would agree that one of the most important things in
11 setting a corporate ethos is the tone from the top?

12 A. It's correct.

13 Q. Is "tone from the top" an expression you're familiar
14 with?

15 A. I'd like to mention here that when you say "tone from
16 the top", it's a group, it's not one individual. It's
17 group on the board. That's correct, yes.

18 Q. Actually, I was going to go on to deal with that, but
19 first of all, the general proposition, you understand
20 what I mean by the term "tone from the top", do you?

21 A. Yes.

22 Q. You agree that it is an important part of setting the
23 corporate ethos for a company?

24 A. Very true.

25 Q. As you rightly point out, that responsibility doesn't

1 18:18 just fall on one person. So, for example, you, as the
2 SEO of Al Masah DIFC, it would fall on the board members
3 and other senior executives as well, wouldn't it?

4 A. Very true.

5 Q. Who have to set an example to the rest of the firm --

6 A. Yes.

7 Q. -- in how they act; agreed?

8 A. Very true.

9 Q. And in how they comply --

10 PRESIDENT: Ms Clarke, I'm sorry to interrupt, but it's
11 exactly the same as with Mr Hill this morning. You're
12 getting a little bit of static. Bearing in mind that
13 the witness no doubt speaks many languages, I think if
14 you could get a bit nearer to your mic or do something
15 to make it a little clearer. Thank you.

16 MS CLARKE: Yes. Let me adjust things. I'm using two
17 computers, which doesn't make it much easier.

18 PRESIDENT: That's already much better.

19 MS CLARKE: Is that better for everybody? Mr Dash, is that
20 better for you?

21 A. Thank you.

22 Q. Mr Dash, can I just say this. If at any point you can't
23 hear me properly, or you have any concerns about that,
24 please tell me. Because it's important that I know that
25 you clearly heard my question. Don't be embarrassed to

1 18:20 tell me if there's a problem.

2 A. I will raise my hands.

3 Q. All right. Thank you very much.

4 So back to where we were, we were talking about the
5 tone from the top. We were talking about the fact that
6 that falls not just upon the head of the firm, but the
7 senior executives as well. You have to set an example
8 about conduct and compliance. Agreed?

9 A. True. Agreed.

10 Q. What that means is, fundamentally, conducting themselves
11 with integrity and in compliance with the rules; yes?

12 A. Yes.

13 Q. And being seen by the firm to do so, by the employees?

14 A. I would think so.

15 Q. Senior executives who set the tone from the top would
16 include, for example, at Al Masah Capital Management
17 Ltd, Mr Singhdeo and Mr Lim, wouldn't it?

18 A. It would include, first of all, the chairman and vice
19 chairman of the company and the board of the company,
20 then go on to the CEO and then it would go to the
21 partners of the company, which included Mr Singhdeo,
22 Mr Amitava Ghosal and the head of compliance, which is
23 Helen Baines. In this case, but before that, Total
24 Solutions, yes.

25 Q. What about Mr Lim? I don't think you mentioned him, do

1 18:21 you, or maybe I forgot.

2 A. Because you asked for who are the top management.

3 Mr Lim was quite senior in the role, but he was not
4 a partner in the firm.

5 Q. So you wouldn't regard him as having a role where he had
6 to lead by example?

7 A. No, he had to. Everybody in the team had to lead by
8 example, for sure, because he had senior roles in other
9 companies.

10 Q. Can we look, then, at your roles in the various entities
11 that we have heard about in the context of this case and
12 also the roles of the names of some of the other people
13 we have heard about. All right? Could I ask that
14 bundle B, the DFSA's skeleton appendices, is brought up
15 on to the screen.

16 A. We have a bigger screen here. Can I move and look at
17 that instead of looking at it in my laptop?

18 Q. I need to be able to see you. That's the difficulty.

19 A. Yeah, no, I'll be here in front of you.

20 Q. Yes, as long as we can see you, you can look at whatever
21 screen suits you best.

22 A. Thank you.

23 Q. Then could we go within the document to page 8.

24 Is this a document that you have seen before,
25 Mr Dash?

1 18:25 A. Yes.

2 Q. It lists the various companies that are the subject of
3 this case or that are connected with the case. And also
4 the names of various individuals, who have played
5 particular roles at the companies at particular times.
6 You have had the chance to view the schedule --

7 A. It has only one company here.

8 Q. That's because that's the first one we're looking at.
9 We're going to look at all of them.

10 A. Okay.

11 Q. But what I wanted to know was, have you seen the whole
12 schedule before and had the chance to look at it before?

13 A. I think so. I think so.

14 Q. Let's see how we go, shall we?

15 A. Yes.

16 Q. We'll start with Al Masah Capital, because that's the
17 first one. According to your witness statement, your
18 third witness statement, paragraph 46, I'm not going to
19 ask for it to be brought up, because I don't think the
20 quote is going to be controversial. You were the CEO of
21 Al Masah Cayman until you resigned as a result of this
22 investigation; is that right?

23 A. That's correct.

24 Q. Obviously, the list of directors as at February 2017
25 that we see there, includes your name, but of course, it

1 18:26 doesn't show that you were the CEO and that would be
2 right, based on what we've said?

3 A. Sorry. I'm --

4 -- (overspeaking) --

5 A. -- DIFC. I resigned from DIFC, not from Cayman.

6 Q. I understand. I have misunderstood.

7 Anyway, you were the CEO of Al Masah Cayman during
8 the period that we're concerned with; is that correct?

9 A. That's correct.

10 Q. And, of course, you were also a director, weren't you?

11 A. I was a director, yes.

12 Q. Along with, as you rightly pointed out before, a number
13 of other people. And if we could scroll down a little
14 bit to see the other names that are listed in the senior
15 management team, we see Mr Singhdeo, who is listed as
16 a partner and secretary -- sorry, partner and CFO;
17 correct?

18 A. Yes, but I can see that it is -- this table is not
19 right, because it doesn't include the authorised
20 people's name. It only includes Nrupaditya's name, but
21 the other authorised person, Ms Helen Baines, her name
22 is not here.

23 Q. I see. Her name, you say, should be in there as well.
24 But other than that, the other names are correct, are
25 they?

1 18:28 A. In terms of position, yes.

2 Q. Of course, the other person who's an applicant in these
3 proceedings is also listed, and that's Mr Don Lim, isn't
4 it?

5 A. That's correct.

6 Q. Mr Lim had the title of executive director?

7 A. Very true.

8 Q. Your witness statement at paragraph -- statement 3 at
9 paragraph 17 -- and again, I'm not going to ask for this
10 to be brought up, because I'm just going to quote
11 something that you said in that paragraph. And I think
12 you've got access to your witness statements anyway,
13 haven't you?

14 A. I have in front of me, I can open it, if you wish to, if
15 you want me to open it?

16 Q. I think everybody else has copies of the witness
17 statements and they can do the same and it will just
18 shorten the process a little bit.

19 A. Witness statement number 3?

20 Q. Number 3, paragraph 17.

21 A. Yes.

22 Q. What that paragraph says, and I may paraphrase slightly,
23 that it says that you had worked closely with
24 Mr Singhdeo and other senior team members, such as
25 Mr Lim and Mr Huwaij, in early discussions about the

1 18:29 setting up of AMC, Al Masah Cayman?

2 A. Correct.

3 Q. Is that a broad summary? Is that correct?

4 A. That's correct.

5 Q. Both Mr Singhdeo and Mr Lim worked closely with you in
6 setting up Al Masah Cayman. And if you could look at
7 another paragraph of your witness statement,
8 paragraph 46.

9 A. I think all four of them worked closely with me in
10 setting it up, so we used to be former colleagues.

11 Q. I'm focusing on Mr Singhdeo and Mr Lim for obvious
12 reasons, because they're the focus of this proceeding.
13 You understand that I'm not suggesting they're the only
14 people you worked with.

15 A. Because paragraph 46 is where I describe about the
16 people that I set up the business with when I started.

17 Q. Exactly. I'm not suggesting that Mr Lim and Mr Singhdeo
18 were the only ones. But at paragraph 46, you describe
19 them and others as founding members of Al Masah Cayman?

20 A. Very true.

21 Q. Now can we move, down the schedule, to Al Masah Capital
22 Management Ltd. The licensed directors there are given
23 and then if we could scroll down to other notable names.

24 A. If I may do a small correction here, a lot of these
25 directors' names, which are mentioned out here, have

1 18:31 changed over a period of time. So, some of them have
2 gone, some of them have joined. I'm not sure that 2015,
3 when we are talking about this, or 2017, whether they
4 were the directors of the company.

5 Q. All right. Let's just focus on a couple of names to
6 start with. Other notable names, Mr Singhdeo, who was
7 the finance officer and senior manager within the period
8 we are concerned with; correct?

9 A. Correct.

10 Q. And Ms Baines is there, because she was the compliance
11 officer of Al Masah Capital Management Ltd during the
12 dates specified, wasn't she?

13 A. Yes, correct.

14 Q. Then Polly Jackson, who I think did the compliance role
15 before Ms Baines; is that correct?

16 A. Actually, before Ms Baines, there were three other
17 compliance officers. I know the gentleman who used to
18 be at the same time or just before Polly was a gentleman
19 known as Usman Basharat.

20 Q. We have already established that you yourself were
21 a director and the SEO of this company?

22 A. SEO, yes, correct.

23 Q. During the relevant period that we're concerned with?

24 A. That is correct.

25 Q. Mr Singhdeo, in addition to being the roles that we have

1 18:33 there, finance officer and senior manager, was also the
2 secretary to the board of directors, wasn't he?

3 A. That is correct.

4 Q. And, of course, he was also an authorised or licensed
5 individual, wasn't he, for this company?

6 A. He was.

7 Q. If you compare the names of the directors of Al Masah
8 Cayman and Al Masah Capital Management Ltd, a good
9 number of them are the same, aren't they?

10 A. Very true.

11 Q. Virtually all; would you agree with that?

12 A. That is as a result of the structure, because Al Masah
13 Capital DIFC was a wholly-owned subsidiary of Al Masah
14 Cayman.

15 Q. In addition to that, of course, we have got Mr Singhdeo
16 being common to both companies, as other notable names,
17 don't we?

18 A. All the employees of Al Masah Capital Management Ltd
19 were seconded from Al Masah Capital Cayman. So from the
20 directors to the employees, it was a mirror image.

21 Q. Al Masah Cayman, although a Cayman Islands company, did
22 not have any employees in the Cayman Islands, did it?

23 A. No.

24 Q. It didn't, as I understand it, have any meaningful
25 office there either?

1 18:35 A. That is the characteristics of a Cayman holding company,
2 so what you're saying is correct.

3 Q. They may have had a postbox, but they didn't have an
4 office where people were there working?

5 A. They had a registrar and postbox, yes.

6 Q. The position was that the boards of both companies were
7 based in the DIFC, weren't they?

8 A. The boards were not based in DIFC. The employees were
9 all based in DIFC. The board was based -- I mean,
10 I don't know how you define, but the board is from all
11 over the world. So employees were all based out of
12 DIFC, because they were under an employment contract.

13 Q. But you say that board members may have lived all over
14 the world?

15 A. Yes.

16 Q. Rather than in Dubai?

17 A. Yes.

18 Q. A good number of them, though, lived in Dubai, didn't
19 they?

20 A. Actually, not even one, except me.

21 Q. You did, and you're saying no one else?

22 A. In UAE, in United Arab Emirates, yes, another three,
23 four of them, yes.

24 Q. You've already told us that all the employees, so that
25 would include the senior employees, were also based in

1 18:36 the DIFC?

2 A. Except some of them who are based out of Singapore and
3 Abu Dhabi.

4 Q. It's, I think, common ground between us that both
5 Al Masah Cayman and Al Masah Capital Management Ltd
6 shared office space in two buildings within the DIFC?

7 A. Al Masah Capital Ltd had no offices in DIFC. Al Masah
8 Capital Management Ltd had offices in DIFC.

9 Q. You're saying that Al Masah Capital did not share office
10 space in the DIFC with Al Masah Capital Management Ltd?

11 A. Sorry, it was a Cayman company, so it had no offices in
12 Dubai. It had subsidiary offices in DIFC, in Abu Dhabi
13 and in Singapore.

14 Q. You're saying it had no offices anywhere?

15 A. I said Al Masah Capital Cayman had no offices. Its own
16 subsidiaries had offices in three different cities in
17 the world.

18 Q. But Al Masah Cayman you say had no offices at all
19 anywhere in the world itself?

20 A. That's correct.

21 Q. We may have to come back to that. Can we then turn to
22 the holding companies, because I want to complete this
23 schedule. Actually, before we do that, let's deal with
24 Regulus, just for completeness, because it's there next
25 in line.

1 18:38 The directors of Regulus were you and all the other
2 directors, exactly the same as the names we see as
3 directors of Al Masah Capital; agreed?

4 A. They have changed over that period but, yes, the date
5 that you're mentioning, on that particular date, yes,
6 that's correct.

7 Q. The holding companies, or investment companies, as they
8 are referred to by us and by you, can we --

9 MR MALEK: Ms Clarke, can I just ask something about
10 Regulus, because it has been mentioned. I mean, is it
11 operating in a different way to Al Masah Cayman? Could
12 you just explain how it operates? Is it a totally
13 different company in terms of its business model or does
14 it operate in the same way?

15 If that's a question that doesn't need to be
16 answered in this hearing, then we can leave it, but we
17 have seen a reference to Regulus and I would just like
18 to know what Regulus is and how it relates to the
19 previous business.

20 MR HILL: Can I volunteer an answer to that, which is that
21 Regulus doesn't have anything to do with these
22 proceedings. My learned friend's witness tried to bring
23 it in and I didn't ask him about it, Mr Hammond.

24 Regulus is a company which performs investment
25 management services now, for the investment company.

1 18:39 There's no allegation in respect -- in the decision
2 notices and it's no part of the claim before this
3 tribunal.

4 My learned friend keeps trying to bring it in for
5 some reason. I imagine she thinks it will have some
6 prejudicial value or something. It isn't any part of
7 these proceedings.

8 MR MALEK: In which case, I won't ask any questions about
9 it.

10 MS CLARKE: Sir, you'll have seen what Mr Hammond says about
11 it --

12 PRESIDENT: To be fair to Ms Clarke, it wasn't her that
13 brought it in at that point. Mr Malek asked a question,
14 which was of interest both to me, I think, and also to
15 my other colleague. We simply didn't know where it all
16 fits in.

17 MR HILL: Just to answer that, it is a company that now
18 performs investment management services for the private
19 equity structures.

20 PRESIDENT: On we go.

21 MS CLARKE: Shall we move on to another page of this
22 schedule? The next page, page 10.

23 The holding or investment companies. Let's take the
24 first one. Healthcare MENA, which became Avivo; agreed?

25 A. Correct.

1 18:41 Q. All four of these holding companies were incorporated in
2 the Cayman Islands; correct?

3 A. All the four companies are in Cayman Islands, yes,
4 correct.

5 Q. The board members for Avivo, taken from an exhibit
6 that's dated January 2016, we have you, Mr Dash and we
7 have Mr Singhdeo, Mr Huwaij, who is a name that we have
8 heard before, and also Mr Lim; correct?

9 A. Correct.

10 Q. ANEL, next one. Al Najah Education Ltd. Just so
11 I don't confuse you, Mr Dash, but the shorthand that
12 everybody has adopted for this is ANEL, as you probably
13 have seen in some of the documents. So if I refer to
14 the company as "ANEL", that's why I'm doing it and this
15 is the company I mean. All right? So I don't want to
16 confuse you.

17 A. A lot of these boards have changed from the dates that
18 you're showing, but that's okay. For example, Avivo,
19 myself and Mr Don Lim are not board members any more.
20 But that's okay.

21 Q. Sure, but what I'm concerned with is the period, the
22 relevant period that these allegations comprise, which
23 is August 2010 to June 2016. Do you understand me?

24 A. That's correct.

25 Q. I'm going back four years or more, and the document that

1 18:43 has been used to comprise this schedule admittedly is
2 slightly outside of our period, because it's
3 dated March 2017. But what it shows is that at that
4 date, you were listed as the chairman.

5 A. Correct.

6 Q. As indeed you were listed as chairman for the previous
7 company, Avivo or MENA, Healthcare MENA, weren't you?

8 A. That is correct.

9 Q. Mr Singhdeo is the chief executive officer and we have
10 Mr Lim there as well.

11 A. Correct.

12 Q. I'm not going to do the same exercise for the other two,
13 because I think everybody can read the schedule for
14 themselves. But just to take this shortly, the board
15 members of the other two holding or investment
16 companies, DLL, Diamond Lifestyle, and GPL, which is
17 Gulf Pinnacle, again, you, as the chairman, Mr Singhdeo
18 and Mr Lim and the same names that we see for the other
19 two boards that we have looked at; correct?

20 A. With different other investors being also board member
21 in each of the companies.

22 Q. But a lot of common names and in particular, you,
23 Mr Singhdeo and Mr Lim; correct?

24 A. Very true.

25 Q. Your relationship with Mr Singhdeo and Mr Lim, we have

1 18:44 already covered the fact that you worked closely with
2 both of them on setting up Al Masah Capital; correct?

3 A. I worked closely with a lot of other people to set up
4 Al Masah Capital.

5 Q. I'm not saying they were the only ones and I think I've
6 already acknowledged that.

7 A. That's right.

8 Q. What I'm focusing on is your relationship with
9 Mr Singhdeo and Mr Lim. You understand?

10 A. Very true.

11 Q. You worked closely with them and others on setting up
12 Al Masah Capital. You presumably were instrumental in
13 having them on the boards of these four investment or
14 holding companies, weren't you?

15 A. Correct.

16 Q. The reason why you did that was because you trusted
17 them, didn't you?

18 A. Why I did that, because they formed part of the
19 executive management committee at Al Masah Capital and
20 we had a role to play. So all the senior team members
21 had a role to play in the companies that we were
22 advising.

23 Q. Another reason why you did it was because you trusted
24 them, didn't you?

25 A. That is correct. I trusted my whole team.

1 18:46 Q. Mr Lim and Mr Singhdeo were people that you could rely
2 on, weren't they?

3 A. Correct.

4 Q. And they were people who were loyal to you?

5 A. I don't know what that terminology is in the
6 professional sense, but they were good in their work or
7 I would say that I had good reviews about them.

8 Q. You had, I suppose, given them a professional helping
9 hand, hadn't you, in giving them these opportunities?

10 A. Not really. I think they, on their own, were good
11 enough for those senior roles, like everybody else in
12 the team.

13 Q. But you were the one who was more senior than them. To
14 some extent, were you their mentor?

15 A. Not really, no.

16 Q. You don't think so?

17 A. I don't think so. They had a lot of good experience
18 even prior to joining us and all of them are much --
19 very well qualified as well.

20 Q. But as far as you were concerned, were they people who
21 you could trust to be loyal to you?

22 A. I could trust for them to do their work.

23 Q. What about being loyal to you? Would you trust them to
24 do that?

25 A. I don't know whether that term means anything in the

1 18:47 professional sense in a company. They're not my family.

2 Q. What about in a personal sense?

3 A. What I meant was in a professional sense, we worked in
4 a company, we were good professionals and we shared good
5 camaraderie and I trust them.

6 Q. What about in a personal sense? Did you trust them in
7 that way as well?

8 A. No, I mean, of course I like them, I like them, but we
9 stay far -- I mean, we meet in the office only.

10 Q. I'll leave that point there.

11 Al Masah Cayman. Could we bring up exhibit C003,
12 it's your witness statement number 3, which is C003.

13 A. My witness statement number 3?

14 Q. Your witness statement number 3 and the bar code it's
15 been given is C003. And I have been told I have to say
16 that for the purposes of the transcript, so I'm trying
17 to remember.

18 A. It's my witness statement.

19 Q. Sorry, I have been told to get the references right and
20 I haven't. It's Mr Dash's third witness statement and
21 it's actually C010.

22 If you could scroll down to paragraph 13. What
23 you're describing in this section is the lead-up to how
24 Al Masah Capital came into being, aren't you?

25 A. Correct.

1 18:50 Q. In that paragraph, what you say is:

2 "High net worth individuals, family businesses and
3 financial institutions were seeking good opportunities
4 to deploy their capital in suitable businesses."

5 Yes?

6 A. Correct.

7 Q. You said:

8 "It was also obvious to me that [these people] ...
9 did not have professional asset managers to guide them
10 in investing their capital. They were also growing
11 increasingly wary of investing into blind pools of funds
12 where they might not have controlling influence."

13 Correct?

14 A. Correct.

15 Q. Then if we go on, paragraph 14, you talk about the
16 global economic crisis in 2007/08 and the effect that
17 that had.

18 Then paragraph 15, you talk about the fact that you
19 had good relationships with other entities as well and
20 you started to talk to various people, who later became
21 Al Masah Cayman board members, including, as we know,
22 Mr Singhdeo and Mr Lim.

23 What you say at line 6 is:

24 "... it became increasingly clear that high net
25 worth individuals and family offices in particular

1 18:52 wanted to know about the businesses they were investing

2 in."

3 Yes?

4 A. Correct.

5 Q. Then:

6 "They also wanted access to their money and be part

7 of the decision making process as to the investments

8 made."

9 Then next sentence:

10 "This would allow them transparency and control, as

11 well as the ability to make better returns."

12 Correct?

13 A. Correct.

14 Q. As a result of all of those discussions and the

15 conclusions that you reached, which you have set out,

16 I think, in the sentences that I have just read out, the

17 structure that you came up with was the four -- I'll use

18 the term that's fairly neutral -- platforms that are the

19 subject of this case?

20 A. Correct. Not to say that we didn't have funds before.

21 We had lots of funds as well in Al Masah Capital DIFC.

22 Q. Sure. But in order to deal with this issue for this

23 market, you came up with these four funds?

24 A. That's correct. Companies, yeah.

25 Q. Companies, as you would say.

1 18:53 Scrolling on to paragraph 46 of your witness
2 statement, we talk about how Al Masah Capital was
3 incorporated and you were appointed as the CEO,
4 et cetera. The incorporation, according to your witness
5 statement, and you have referenced an exhibit, but
6 I don't think we need to go to it, was to provide
7 investment management services.

8 A. Correct.

9 Q. Do you recall being asked about that or about the
10 business of Al Masah Capital in your interview with the
11 Dubai FSA?

12 A. I'm sure I was. That must be 2010 you're talking about?

13 Q. Yeah. I don't expect you to have an encyclopedic memory
14 of three interviews. So what I'm going to do is take
15 you to the bit that I'm interested in at exhibit 107,
16 bundle D, exhibit 107, which is a transcript of your
17 interview.

18 This is, in fact, your first interview. That's the
19 first page of it. It's an interview that took place on
20 15 November of 2015; yes? Which I think was the day
21 that the Dubai FSA turned up at the offices of Al Masah
22 Capital Management Ltd.

23 A. Yes.

24 Q. Could we go to page 14 of the transcript. Just to put
25 this in context, you're being asked about the various

1 18:57 businesses and what they do, and who has day-to-day
2 responsibility. And that's the first question that we
3 can see from Stephen Glynn at the top of that page. All
4 right? Then he says:

5 "So if I can start with Al Masah Capital Ltd, which
6 is incorporated in the Cayman Islands. Can you tell me
7 what the purpose of that company is and what its
8 business office --"

9 You say:

10 "It's to be asset manager and adviser. It does
11 exactly the activities that a category 3 DIFC entity
12 would do, funding and arranging advisory asset
13 management, fund management."

14 Do you see that that's the answer you gave?

15 A. I see that, but I must also say that on that particular
16 day, suddenly a lot of DFSA people came into the office,
17 maybe in numbers of more than 30, 40 of them. And this
18 was -- they said that, "You have to be interviewed" and
19 with notices and all.

20 So it had a different impact on me. And going on an
21 interview just like that, ex-tempo, you know, what I was
22 saying, I was not in the right state of mind. But, yes,
23 if I said that, it's in the transcript, I'm sure that's
24 correct.

25 But I'm just saying the situation at that point in

1 18:58 time, when you have 30, 40 people coming into your
2 office, and sitting on you and telling you, you know,
3 that you'll be questioned, "You have a notice, we are
4 going to take away your servers. We are going to take
5 away your computers, laptops, mobiles", and you have a
6 forensic team, so obviously, you know, it would be -- it
7 would have a different effect on you at that point in
8 time.

9 Q. I don't doubt it was a bit stressful, but the point is
10 that this question is not a difficult question, is it?

11 A. No.

12 Q. Given that you set the company up and you had a very
13 senior role within it. Therefore, the answer that you
14 gave is a true and accurate answer, isn't it?

15 A. No, I think the answer I wanted to give was that
16 Al Masah Capital Ltd wanted to set up in DIFC
17 a category 3 entity, which should do the funding,
18 arranging, advisory, fund management business.

19 Q. The question you were asked, though, was:

20 "Can you tell me what the purpose of that company
21 [ie Al Masah Cayman] is and what its business office --"

22 Then you give the answer that you give.

23 A. From the transcript, yes. But, like I said, it was
24 under a lot of stress, so instead of giving the right
25 answers, I might have given answers that I was, at that

1 19:00 time -- you know, I would not -- at least for the time
2 being, you know, this doesn't seem right to me.

3 Q. Well, I'm going to suggest that this was not a difficult
4 question, even taking into account a level of stress and
5 that the answer, therefore, that you gave was in fact
6 a truthful answer. That's what I'm suggesting.

7 A. I don't agree with that.

8 MS CLARKE: Sir, I note it's 4 o'clock. I'm in your hands.

9 PRESIDENT: If that is a convenient moment, those are our
10 sitting hours, so unless there's a particular need to go
11 on, we will break now and resume again tomorrow at 10.

12 Mr Dash, one of my jobs at the end of the day is to
13 remind, is to tell witnesses that what they -- until --
14 that they are continuing to give evidence and while they
15 are giving evidence, they mustn't talk to anybody else
16 about their evidence. Do you understand that?

17 WITNESS: Thank you, sir. I do.

18 PRESIDENT: You may not know, but you're not even supposed
19 to talk to your solicitor about your evidence while it's
20 going on. I'm sure your lawyer will advise you about
21 that. So thank you for coming and we look forward to
22 seeing you again tomorrow at 10.

23 WITNESS: Thank you. Look forward to it.

24 MS CLARKE: Sir, can I inevitably raise one matter of
25 housekeeping before we rise?

1 19:01 The position, as I understand it, with Mr Hammond's
2 fifth statement, I think I said that magically, some
3 server would mean that it would all be put in the bundle
4 that would then magically appear on all our computers.
5 I'm afraid that was my lack of IT knowledge and probably
6 wishful thinking.

7 So I'm afraid it's something that we're all going to
8 have to do manually. The exhibits, you're right that
9 nearly all of them are already in the bundle, but
10 I think there is one that isn't and so that needs to be
11 added to bundle D. And I'm afraid that has to be done
12 manually as well.

13 MR STOREY: Which exhibit is that?

14 MS CLARKE: I'm sorry, I'm being told that actually there
15 are a few. I'm afraid, I don't have a list. So maybe
16 the answer is that we email a list to everybody and then
17 everybody is clear. I'm afraid, as you can probably
18 understand, I have been focused on other things.

19 PRESIDENT: That's all right. Send us an email. It doesn't
20 sound to me a problem at all.

21 Is there anything else of that kind we need to
22 discuss this evening?

23 MS CLARKE: No other housekeeping, no. Thank you, sir.

24 PRESIDENT: Mr Hill?

25 MR HILL: No, nothing from me.

1 19:03 PRESIDENT: Thank you very much. See you all tomorrow.

2 (7.03 pm)

3 (The hearing adjourned until 1.00 pm on the following day)

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