

REGINA

[Brian O'Neill QC, Angus Bunyan, Hannah Willcocks and Rachel Naylor]

-v-

DAVID MILLS

[Kieran Vaughan QC and Simon Baker]

MICHAEL BANCROFT

[Gary Bell QC and Rebecca Herbert]

MARK DOBSON

[Philippa McAtasney QC and Daniel Jameson]

JONATHAN COHEN

[Nigel Lithman QC and Tim Kendal]

ALISON MILLS

[Alexander Cameron QC and Patrick Hill]

JOHN CARTWRIGHT

[Adam Kane QC and Paul Williams]

OPENING NOTE

26TH SEPTEMBER 2016

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INTRODUCTION

1. This case as you will have noted from the dates on the indictment is concerned primarily with events which took place some time ago, between 2003 and 2007. During that period a man named Lynden Scourfield (54 – 12th February 1962) was Lead Director of Impaired Assets ('IA') for HBOS¹ in the South of England and South Wales; this division of the Bank provided strategic advice and assistance to corporate customers who were experiencing financial distress. Scourfield was based at the Bank's Reading office².
2. David Mills (59 – 7th December 1956) was a former banker turned venture capitalist and business consultant³. One of his companies, Quayside Corporate Services Ltd ('Quayside' or 'QCS') was engaged on a frequent basis by Scourfield to act as a turnaround consultant to the Bank's IA customers who were under his day to day control.
3. The corrupt relationship which developed between these two men lies at the heart of this case. Their actions between 2003 and 2007 were wholly dishonest and fraudulent.
4. You will have noted that Lynden Scourfield is not in the dock; he is not on trial and you must not speculate about his absence or the reasons for it.
5. Scourfield required business customers within his portfolio, customers who were already in considerable financial difficulty when Scourfield became involved, to engage the services of Mills and QCS in order to obtain further Bank lending.

¹ The Bank of Scotland ('BoS') merged with The Halifax in 2001 to form Halifax Bank of Scotland ('HBOS'). HBOS was acquired by Lloyds Banking Group ('LBG') in 2009. In this document, BoS and HBOS will be referred to generically as 'the Bank'.

² Scourfield also had responsibility for the Bishopsgate office in the City. He had joined Kellock Ltd, a subsidiary of Capital Bank, which was itself a subsidiary of the BoS, in around 1992 in the invoice discounting / cash flow finance department. From around 2000, he was employed directly by BoS in the Reading office, dealing with high risk connections.

³ Marketing material from Mills' firm Quayside described his credentials thus: "Previously a Director of a major division of NatWest Bank, he has been involved in the buying and selling of numerous businesses, also chairing companies on a non-executive basis on behalf of VC's and UK banks." Quayside, An Introduction, ex.p.78047.

6. Once QCS was established, Scourfield advanced huge sums to the businesses and continued to do so, well past the point when it would have been obvious to any honest banker that the Bank debt could and would never be re-paid.
7. He acted in this way to enable Mills and his associates (Bancroft, Cartwright and Mills' wife Alison (51 – 13th May 1965)) to demand and be paid very high fees for their 'consultancy' services and to give Mills and Bancroft the opportunity to take over some of the businesses and run them for their own benefit.
8. Scourfield paid absolutely no regard to his overriding duty as an employee of the Bank to protect its financial interests. At the end of the day the Bank incurred losses in the order of £245m in respect of customer lending managed by Scourfield which ultimately had to be written off⁴.
9. The motivation was greed. The Police investigation uncovered evidence of huge rewards provided by Mills to Scourfield to effect his corruption. This took the form of money transfers, cash, expensive gifts, use of an American Express card for personal spending, unauthorised and inappropriately lavish hospitality, luxurious foreign travel and sexual encounters with high class escorts⁵.
10. Very large amounts of money were paid in fees to QCS by HBOS 'high risk' customers on whose behalf QCS was engaged and QCS in turn transferred a great deal of that money to the personal bank accounts of David and Alison Mills. Those personal accounts also received very considerable sums directly from some of those same HBOS 'high risk' clients.
11. Reaching a precise figure is not easy, but in general terms more than £28 million passed through the personal accounts of Mr and Mrs Mills or the accounts of various Mills' corporate entities such as QCS, Sandstone and Knightingale from HBOS high

⁴ Atkar, st.p.517.

⁵ See Scourfield's benefit from the corrupt agreement section, below.

risk clients. It is not suggested that Mr and Mrs Mills retained all of that money for their own personal benefits but they did benefit enormously.

12. However, the fees paid by IA customers (or by the Bank on their behalf) to David Mills direct, via Quayside or another Mills entity represented only part of his benefit from his corrupt relationship with Scourfield. This investigation has revealed a more complex picture than a mere 'cash for contracts' arrangement between the two men.

13. What Scourfield gave Mills in addition to fees was the opportunity to take control of the various businesses and, in some cases, to acquire ownership of them⁶. Mills and his associates used the Bank's customers and the Bank's money dishonestly to enrich themselves.

14. For this reason, the case is just as much about what happened to the businesses under the mismanagement of Mills as it is about the corrupt relationships which lay behind the fraudulent trading of each of the companies on the indictment.

15. The pattern that emerges is of:

- (i) Already vulnerable businesses being further run down by incompetency or as a deliberate policy or as a combination of the two;
- (ii) Complete disregard for the interests of existing shareholders and creditors;
- (iii) Increasing levels of Bank funding improperly diverted between companies and to Mills entities;
- (iv) The theft of company money and of money due to the Bank; and
- (v) Eventual insolvency resulting in huge losses to the Bank and others.

16. Moreover, neither Scourfield nor David Mills nor Michael Bancroft was troubled by the proper interests of the directors, shareholders and creditors of the various companies. Many individuals suffered great financial loss and considerable personal

⁶ See Mesher Mills report, para 3.7, ex.p.75433 for a table of Mills' corporate ownership interests.

trauma as a result of the callous disregard shown by Scourfield, Mills and Bancroft for the businesses those individuals had established, owned or managed⁷.

- 17.** Michael Bancroft (73 – 4th September 1943) had a background in the textile industry and was engaged by Mills as a Quayside consultant to a number of companies. He was Mills’ man on the ground in these businesses, overseeing their demise and enriching himself in the process. He became a director of many of the companies⁸ and a shareholder in some⁹.
- 18.** He received around £1 million in direct traceable payments from Mills’ company QCS and directly from HBOS ‘high risk’ companies during the period with which you are concerned. This included spending more than £100,000 on the credit card of one of the financially distressed companies he was supposed to be turning around, much of which was clearly personal expenditure¹⁰.
- 19.** Scourfield was also close to Bancroft. As well as accompanying Bancroft, his wife and others to Barbados to celebrate Alison Mills’ 40th birthday, Scourfield and his wife, Jacqueline, stayed at the Bancrofts’ villa on the Algarve in Portugal in 2004 and 2005.
- 20.** Bancroft was a long-time associate of Cartwright, whom he had known since at least the 1980s.
- 21.** John Anthony Cartwright, known as ‘Tony’ (71 – 18th December 1944) was contracted by Mills and Bancroft to prepare management accounts for a textile company (and HBOS ‘high risk’ client) called Magenta and also had involvement with other Mills and Bancroft controlled entities such as MSG/Clothing Proceeds, Simon Jay, Remnant, and Flip Media. He connived in the fraudulent trading at Magenta and received unauthorised payments totalling around £200,000 as a result.

⁷ See, for example, Blackburn,, Robinson and Levy.

⁸ See Mesher, Bancroft report at para.3.16, ex.p.75299, and Appendix 3, ex.p.75341, for a full list.

⁹ For example, Theros and Simon Jay.

¹⁰ See Theros section, below.

- 22.** Mark Dobson (55 – 11th December 1960), a colleague of Scourfield in the IA division at HBOS, had responsibility for managing two particular high risk accounts (Eyesaglow¹¹ and the St David’s Centre¹²) on behalf of HBOS. In both cases, Mills improperly derived a significant financial benefit from transactions overseen by Dobson. In return, Dobson received £30,000 in corrupt payments via Mills’ company Knightingale and benefited from inappropriate hospitality
- 23.** Jonathan Cohen (57 – 8th June 1959) is an accountant whose firm, Brett Adams, was heavily dependent on Mills and Mills-related companies for a large slice of its turnover. The firm also dealt with the personal tax affairs of the Mills and of the Scourfields.
- 24.** By 2005, Brett Adams, which banked with HBOS, was itself experiencing severe financial difficulties. The Bank transferred the firm’s account to IA in Reading where Scourfield became its relationship manager and sanctioned extended borrowing facilities to the firm.
- 25.** It was, no doubt, the combination of heavy reliance on Mills / Scourfield HBOS IA work and the precarious state of his firm’s finances that led Cohen to participate in what he must have known were criminal activities. He willingly provided a professional shield for transactions and activities which were wholly fraudulent.
- 26.** Three companies from Scourfield’s HBOS IA portfolio and with which Mills, Bancroft and QCS were heavily involved have been selected to illustrate the wider pattern described earlier. They are Clode, Theros (Magenta and MSG) and Remnant.
- 27.** Clode¹³ [Count 2] was a finance company originally set up to provide interest-free credit to consumers in high-street shops¹⁴. The company banked with HBOS. By

¹¹ See Eyesaglow section, below.

¹² See above.

¹³ The company name changed over time. See Mesher, Clode report at para.3.2, ex.p.170490 for an overview.

¹⁴ The business expanded into dental care, etc.

2001, due to the loss of several large clients, poor management and other factors, Clode had been transferred to the IA division of the Bank under Scourfield's control.

- 28.** On the 9th of May 2002, a meeting was held at Scourfield's Reading office to discuss the financial position of the company. At the time Clode was operating within its £2.9 million overdraft facility and Scourfield stated that the Bank's funding would continue if the financial position did not deteriorate. In addition Scourfield suggested David Mills for the role of non-executive director. Mills was duly appointed in September of 2002; Alison Mills was to be appointed a fellow director in March of 2005.
- 29.** Over the intervening years, Scourfield facilitated a huge increase in HBOS lending to Clode by way of overdraft and a banking facility known as Cash Flow Finance¹⁵. He did this without obtaining appropriate internal sanction, a process which ought to have ensured that the requisite degree of oversight and control was applied to the Bank's facilities. Scourfield was driven by his corrupt relationship with Mills. His readiness to continue to provide HBOS funds to Clode facilitated Mills' ability to pursue his wider, dishonest business interests.
- 30.** By April of 2003, just seven months after joining the board of Clode at the request of Scourfield, Mills had completed a management buyout of Clode. Having taken control of Clode, Mills began to exploit further his corrupt relationship with Scourfield by borrowing more and more of the Bank's money to finance Clode's new corporate lending 'strategy' as it expanded over the years. Those loans were then used by Mills as a ready source of funding for numerous businesses in which he had an interest and via which he unjustly and dishonestly enriched himself and his associates. Clode was the cash-cow: not for nothing has it been named 'the bank within the Bank'.

¹⁵ Conveniently summarised in chronological order at by Craig at Tab 75 of CCr/4, ex.p.74237-47.

- 31.** Clode's total indebtedness to HBOS at the time Scourfield left the Bank in March 2007 was circa £20.558 million. By way of comparison, when Mills was appointed to the board Clode was operating within its £2.9 million overdraft facility. **14/9/1193**
- 32.** Theros [Counts 3 & 4] was the holding company for an established tie manufacturing business called Frank, Theak and Roskilly, later re-named Magenta. The firm was largely funded by HBOS and by 2002 was under the supervision of the Bank's IA division and Scourfield.
- 33.** Scourfield insisted upon the introduction of Mills and Quayside to the business with Bancroft as the consultant by mid-2003. Bancroft was to become MD of the firm and Mills a director. Both men and Quayside also acquired shareholdings in the various businesses. Cartwright was engaged with the finances.
- 34.** Over the course of Scourfield's involvement, debt level to the Bank reached unsustainable levels: up 79% between October 2003 and June 2007, reaching almost £21m. No evidence of proper sanction has been found for this reckless lending. Meanwhile, under Bancroft and Mills' mismanagement, sales figures declined from £7.5m in 2003 to a little over £1m in 2007.
- 35.** The indebtedness was exacerbated by the decision to borrow almost £300k from Clode. Theros was, of course, unable to service the debt and much was eventually written off by the Bank.
- 36.** Bancroft demonstrated a mixture of incompetence and irrationality in his management of the business and aggression towards both existing staff and those he hired. Wholly unrealistic growth strategies were pursued, largely for the prospective benefit of Bancroft and Mills.
- 37.** Funds advanced to Theros from the Bank were diverted to fund Remnant, itself a Bank-funded high-risk company, but wholly unconnected to Theros apart from through the common involvement of Mills, Bancroft and Scourfield.

- 38.** Funds realised from the sale of a business called MSG which was another part of the Theros group were improperly diverted to Bancroft (£91k) and Cartwright (£34k) and to businesses in which Bancroft and Mills had an interest, instead of going to pay back some of the debt owed to the Bank.
- 39.** Despite all of this, Mills, Bancroft and Cartwright profited handsomely from their involvement. Mills received over £145k direct from the company into his personal accounts. Quayside received over £1m.
- 40.** Bancroft received over £86k direct from Theros in addition to the very large sums he billed Quayside for his services in connection with the company. For example, an off-shore account he operated received over £100k from Quayside for work he invoiced in relation to Theros. Bancroft also spent over £100k on his FTR credit card, much of which was on improper or personal expenditure.
- 41.** Cartwright received over £123k direct from the company.
- 42.** Once Scourfield had left the Bank, the various businesses entered insolvency. Mills, Bancroft and Cartwright did their best to disguise what had happened to company funds when challenged by the administrators.
- 43.** The Bank eventually wrote off £21.2m in respect of lending made to the Theros group.
- 44.** Remnant Media Ltd ('Remnant') [Count 5] was incorporated in September of 2003 by former financial journalist Simon Robinson, in order to purchase an adult magazine business¹⁶. The acquisition was completed in March 2004, with some of the required funding provided by HBOS by way of a term loan for £4.5 million.
- 45.** Due to an error over the terms of the sale contract, a large anticipated cash inflow was in fact payable to the previous owners and as a result Remnant was immediately

¹⁶ Fantasy became a subsidiary of Remnant and had its own subsidiary called Best.

in severe financial difficulties. One consequence of this was Remnant's inability to meet the scheduled repayments of the HBOS loan. By around July of 2004, the company was subject to High Risk oversight by Scourfield's office.

46. Scourfield made it clear to Robinson that the Bank's continued support for Remnant was conditional on the appointment of Quayside as consultants. The Quayside fees were to be £30,000 per month.

47. Chris Langridge who was brought in by QCS quickly established that Remnant was, *"doomed to failure within the foreseeable future"* because Robinson had paid too much for the business and the income revenues were too small to support the level of debt.¹⁷ He told Mills of his view¹⁸ and expected Mills to convene a meeting with HBOS so that they could make an informed decision about the future of the company. No such meeting took place. Langridge: *"Despite this damning conclusion, the BoS continued to support Remnant until 2006.*

48. Simon Robinson, with the benefit of hindsight, has a similarly realistic view of the viability of his company: *"From day one, Remnant was a company in limbo. I expected the BoS to pull the plug when Richard Desmond didn't pay the outstanding money"*¹⁹.

49. Gregory Caswell, managing director of Remnant from 2006, states, *"The reality is that Remnant Media was not a viable company."*²⁰

50. However, Mills and Bancroft, with Scourfield's blessing, were determined to keep Remnant trading for as long as the company, through HBOS, could pay their exorbitant and unwarranted fees and be of use to them for other purposes. Competent, diligent and honest consultants and bankers should have been looking for an early exit strategy which minimised further Bank losses. Caswell puts it thus:

¹⁷ Langridge, st.p.985.

¹⁸ Expressed in an e-mail to Mills, copying in Bancroft, of the 17th of November 2004, CTL/5, ex.p.62934.

¹⁹ Robinson, st.p.803.

²⁰ Caswell, st.p.892.

“My view, throughout my 7 or 8 months with the company, was that it should have been shut much earlier if the Bank and QCS were making sound business decisions

51. As the evidence will reveal the involvement of Mills and Bancroft with Remnant was characterised by improper use of company funds as they proceeded to enrich themselves unjustly as a consequence of their wholly corrupt relationship with Scourfield. Throughout the period of Quayside’s involvement with Remnant its trading position worsened, its borrowing grew and its overall indebtedness increased. By the end of August 2006 Remnant’s debts were in excess of £16 million.

52. The liquidator was appointed on 4th April 2007.

COUNTS 1 & 6

The role of Impaired Assets at HBOS

53. The Impaired Assets ('IA') division²¹ of the Bank where LS and MD were employed specialised in the provision of strategic advice in the management of corporate customers who were experiencing financial distress.
54. The objective of IA was to attempt to ensure that the business was stabilised with a view to returning to the Bank's 'good book', whilst ensuring that the Bank's risk of loss (or further loss) was mitigated as far as possible. If the company was not deemed viable, a planned formal insolvency process would be considered.
55. IA often introduced its customers to 'turnaround consultants'²² to assist with the job of attempting to improve the performance of the business. The engagement of such a consultant was sometimes a condition of continued or further Bank funding.
56. The Bank had developed a standard-form template letter of engagement for such consultants to incorporate within their documents when they accepted an engagement²³. **2/2/329**
57. The letter's terms acknowledged that the consultant owed a duty of care both to the Bank and to the customer [5.1], but was to be retained and paid by the customer [2.4]. It also stated that, unless a consultant became a director, the responsibility for the management and direction of the customer's affairs remained a matter for the board of the customer [6].
58. It was not unknown for a member of the turnaround firm to become a director (usually non-executive) of the business, but any such appointment could only be

²¹ The name of the division changed over time, being variously described as 'High Risk', 'Credit Risk Management' and 'Impaired Assets'. The latter title will be adopted for ease of reference.

²² Or 'company doctors', see Christine Elliott from the Institute for Turnaround ('IFT'), st.p.721.

²³ Reproduced at ex.p.2245.

made by the customer itself. In some cases, the Bank might put forward the name of a potential candidate.

59. By definition, most customers transferred to IA arrived with very significant Bank debt in the form of overdraft, loan and other facilities. If a customer requested renewed or increased Bank lending, the IA case officer with an in-depth understanding of the company would complete a credit application ('CA').
60. The CA detailed the history of the company, what the money was to be used for, the company's assessed ability to service and repay the debt, available security and a recommendation for acceptance or refusal.
61. Scourfield, as a director, had a lending discretion of up to £2m when the customer had a DACS²⁴ figure less than or equal to £250,000. He was also limited to increases in new money less than or equal to £100,000. Above those levels, authorisation via a CA was required from a senior director or, for total borrowing in excess of £5m and a DACS greater than £500k, from the Managing Director of Credit Risk²⁵.
62. In fact, regardless of the sanction level, because of the 'second pair of eyes' principle all of Scourfield's CAs should have gone to his line manager and senior director, Paul Burnett.
63. In addition, where Scourfield was the relationship manager, *"he had no sanctioning authority whatsoever"*.²⁶ According to Hugh McMillan, Managing Director of Credit Risk (Paul Burnett's boss): *"This means that all connections shown with 'LGS'...on the first page were required to be submitted, in the first instance, to Paul [Burnett] or*

²⁴ Discounted Asset Cover Shortfall: the difference between the overall Bank debt and the discounted value of secured assets, or, in other words, the likely recovery shortfall should the borrower default.

²⁵ See the 'At Risk and Recoveries Procedural Guide' of May 2002. The relevant sanctioning limits are set out in table form in section 5. ex.p.2228.

²⁶ Burnett, st.p.1121.

Tom [Angus] and any over the £5m drawn balance level...should have been forwarded to me.”²⁷

64. Each IA office²⁸ would complete a monthly spreadsheet known as a ‘crib sheet’ which listed all the IA cases being dealt with by that office and included details of the total borrowing, the increase or decrease in the month and the approved credit limit for each customer.**1/2/2-17**

65. The crib sheets would be populated with figures drawn from a Bank system known as CODA²⁹. In turn, the figures had to be manually inputted into CODA. The crib sheets would be sent to the Bank’s head office in Edinburgh, to enable senior management to consider the overall picture of the division’s lending.³⁰

²⁷ McMillan, st.p.1159.

²⁸ There were five, including Scourfield’s in Reading.

²⁹ An abbreviation of ‘COrporate DAta’

³⁰ See Angus at st.p.537-9 for a detailed explanation of the crib sheet system.

Scourfield's improper conduct

66. In January 2006, a senior HBOS director, Tom Angus, was appointed to oversee IA. His arrival was to mark the beginning of the exposure of Scourfield's dishonesty.
67. Six months into his new role, Angus began to attempt to gain an overview of the work of Scourfield's Reading office. He became, *"increasingly concerned as to the strategic direction of various cases under Lynden's personal management"*³¹ and he asked Scourfield for sight of the CAs and related authorisations for those cases.
68. Scourfield had to be chased several times and, in January of 2007, Angus finally received several papers purporting to be the most recent CAs³². Angus was suspicious, *"that these might have been recently produced, because they were almost identically formatted and there was mention of events in the body of the applications which appeared to post-date the date of the document."*³³
69. Additionally, there was no evidence of appropriate sanctioning. None were signed by McMillan, Burnett or Angus.
70. Scourfield claimed that he had sent the CA's to Burnett and that he had obtained verbal authority. He also suggested that Burnett operated on an informal basis. Angus sent the CAs to Burnett and asked him to comment. Burnett replied, stating that he had not had sight of the CAs and that there was no informality surrounding sanctioning³⁴.
71. Angus also undertook a review of several months' 'crib sheets' from Scourfield's office. *"I observed that the stated credit limit for various cases within Lynden's*

³¹ Angus, st.p.521.

³² The documents sent by Scourfield to Angus are at Appendix F of JP/9, ex.p.513-558. They purport to cover Bradman Lake Group, Seoul Nassau, De Lane Lea, Dennis Ruabon, Briman, KLD, Clode and Smollensky's. All but Briman are dated January 2006. Briman is dated 30th of December 2005.

³³ Angus, st.p.521. For an example of post-dating, see ex.p.538.

³⁴ See Angus' memo to Burnett at ex.p.512 and Burnett's reply at ex.p.511.

portfolio...appeared to be rising in line with the drawn balance."³⁵ Angus would have expected to find CAs from Scourfield to justify such increased lending, along with corresponding authorisations from him, but these were absent.

72. He began to suspect that there were in fact no properly sanctioned CAs and that Scourfield was nevertheless increasing the credit limits on CODA (or instructing one of his staff to do so) which were then reflected on the crib sheets.

73. A preliminary review within the Bank, led by Andrew Scott, was initiated to establish whether Angus' suspicions were correct and to assess the potential extent of the issues. It reported in February of 2007 that, *"the files reviewed evidenced many gaps in formal sanctioning together with ongoing breaches of limits"*. It also suggested a latent impairment of £90m, with a possible further £70m³⁶. **2/3/336-339**

74. Angus now had, *"the clear impression that Lynden had been agreeing substantial amounts of credit to distressed companies within his area, completely outwith his authority and without any authorisation from Paul Burnett or Hugh McMillan."*³⁷

75. On the 8th of March 2007, at the HBOS Bishopsgate office, Angus handed a copy of Scott's report to Scourfield, told him that he had significant concerns as to its content and arranged a meeting to follow up its contents.

76. Later that day, Scourfield paid a brief visit to his Reading office before going off sick with *'work-related stress'*. He never returned to work and was suspended for gross misconduct³⁸. He resigned from the Bank the following month.

77. Following Scourfield's departure, it became clear to Angus and Scott that, in addition to huge and unauthorised increases in Bank lending, Scourfield's portfolio was distinguished by the involvement of a company called Quayside Corporate Services

³⁵ Angus, st.p.522.

³⁶ Scott's 'Peer Review' is at ex.p.2255.

³⁷ Angus, st.p.523.

³⁸ ex.p.601.

Ltd ('Quayside' or 'QCS') which purported to act as a turnaround consultant to the Bank's customers. Indeed, almost all of Scourfield's cases had involvement from QCS. QCS was owned and controlled by David Mills³⁹.

78. Neither Angus nor Scott had previously heard of QCS⁴⁰. Angus: *"I had serious concerns as to whether a small company...had the expertise to be able to go into companies from so many different industries."*⁴¹ It was also clear that there was no evidence of actual improvement in the fortunes of any of the businesses for whom QCS had worked, despite their involvement in many of them for very substantial periods of time.

79. No formal letters of engagement for QCS, setting out the scope of the work to be undertaken and the level of fees to be charged could be found in the Bank's records⁴². It became clear, however, that Scourfield was responsible for the introduction of Mills' firm to the Bank's customers.

80. Further investigation revealed that not only was QCS given preferential treatment by Scourfield in the allocation of work, but that Mills, his various corporate entities and his business associates very often gained an ownership interest in or took control of the Bank's customers following their initial engagement as turnaround consultants to the business⁴³.

81. Whilst at the Reading office, Scott learnt of a company called Corporate Jet Services Ltd ('CJS') that had been managed by Scourfield. The Bank's records showed, incorrectly, that the firm was still being handled by a 'good book' branch manager and therefore it did not appear on any high risk or impaired assets list or register or on the monthly crib sheets submitted to Edinburgh.

³⁹ Mills was always a director and his share ownership varied between 38% and 100% over time. In his police interview he said he was the "driving force" behind QCS. Alison Mills was a director between 2004 and 2008.

⁴⁰ QCS was not registered with or known to the IFT, see Elliott, st.p.724.

⁴¹ Angus, st.p.525.

⁴² The lack of such documentation was acknowledged by Mills in 2007, during his negotiations with the Bank over unpaid invoices.

⁴³ See 'Project Tenement', a report prepared by Dundas and Wilson on Angus' instructions, for an early attempt to trace Mills' shareholdings in Bank IA customers, ex.p.66467.

- 82.** CJS was losing around £3m per month and those losses were being sustained by an ever-increasing overdraft. The total Bank exposure in April 2007 was £71m and was to rise to over £115m by June. Scourfield should obviously have been reporting this position to his senior managers in the usual way, ensuring that CJS was subject to proper oversight and scrutiny by being classified as High Risk.
- 83.** Mills had been a director of CJS since 2003 and he had owned the business through his company Sandstone since 2005.
- 84.** The Bank commissioned two further internal investigations subsequent to the Scott Report but neither managed to get to the bottom of how Scourfield had been managing his portfolio nor to the true nature of his relationship with Mills.
- 85.** In response to a requirement notice issued by the FSA⁴⁴, the Bank instructed Deloitte to carry out a comprehensive investigation. Their ensuing report, entitled 'Project Windsor', was completed in July of 2010⁴⁵.
- 86.** At the time of the report, the Bank had written off £250m in respect of their IA portfolio. The majority of that write off, £245m, related to customers that were under the management of Scourfield.
- 87.** Deloitte's review concentrated on nineteen customers selected from Scourfield's portfolio. As Scott had previously established, there was found to have been a significant escalation in the level of lending during Scourfield's management with little accompanying evidence of proper sanction and approval. This was combined with a deferment of loss crystallisation and overly optimistic acquisition plans.
- 88.** Total payments to Quayside, Mills related entities and consultants were identified (at that stage) as being approximately £8m.

⁴⁴ Requirement Notice issued under section 166 of the Financial Services and Markets Act 2000, dated 19th of October 2009.

⁴⁵ ex.p.84685 onwards. See also Carrington st.p.3010.

89. Scourfield’s role of introducing Quayside to Bank customers was highlighted, as was the fact that in some cases the businesses were acquired by Mills-related entities. *“This appears to follow a pattern of: appointment of Quayside to the company, establishing an off-the-shelf company specifically for the purpose, and then having it acquire the former HBOS customer, with new facilities being immediately put in place by HBOS following the acquisition.”*⁴⁶

90. Deloitte also identified other specific areas of concern such as the use of a company named Clode, which was itself a customer of the Bank being handled by the IA division, to advance Bank money to other IA customers, some of which were controlled by Mills⁴⁷, and the use of Mills entities to disguise the advancement of loans to other Bank customers⁴⁸.

91. In respect of Mills and QCS, Deloitte noted amongst other things, the following:

- (i) QCS fees being paid directly by the Bank without customer approval;
- (ii) A lack of documentation surrounding their appointment;
- (iii) Their suitability as consultants;
- (iv) The suitability of some of their team⁴⁹;
- (v) The Petards exit fee issue;
- (vi) The Eyesaglow exit fee issue;
- (vii) Payments made between IA customers under the control of QCS for no apparent reason; and,
- (viii) Payments made from IA customers to Mills entities without explanation.

92. The criminal investigation by TVP⁵⁰, which began in May 2010 following a referral by the FSA, was able to take a broader view of the activities of Scourfield, Mills and others. The police, of course, were additionally able to interview witnesses from

⁴⁶ ex.p.84703.

⁴⁷ See Clode section, below.

⁴⁸ See Mills section and Smollensky’s section, both below.

⁴⁹ Particularly Bancroft and Cartwright in the light of what happened at Ritz, see below.

⁵⁰ ‘Operation Hornet’ was the name given to the TVP investigation.

outside the Bank, search properties, access non-HBOS accounts and interview suspects under caution.

93. The police investigation uncovered behaviour on the part of Scourfield that went far beyond the serious negligence and possible improper conduct already identified. His actions between 2003 and 2007 were wholly dishonest and corrupt.

94. Scourfield had embarked on a deliberate, systematic and sustained campaign of unauthorised lending of Bank money to those business customers within his portfolio which were effectively forced, through his influence, to engage the services of QCS.

95. Once QCS was established, Scourfield advanced huge sums to the businesses and continued to do so well past the point when it should have been obvious to any reasonably competent banker that the Bank debt would never be re-paid.

96. He acted in this way to enable Mills and his associates to continue to demand and be paid very high fees for their 'consultancy' services and to give them the opportunity to take over some of the businesses and exploit them for their own benefit.

97. Scourfield paid absolutely no regard to his overriding duty as an employee of the Bank to protect its financial interests.

98. Neither was Scourfield, nor Mills nor Bancroft, troubled by the proper interests of the directors, shareholders and creditors of the various companies. Many individuals suffered great financial loss and considerable personal trauma as a result of their callous disregard for the businesses they had established, owned or managed⁵¹.

99. It was Scourfield's job to ensure that the Bank's interests were protected, not to become directly involved in the day-to-day running of the companies. But, as the

⁵¹ See, for example, Blackburn, Freer, Robinson and Levy.

figure who held the key to continued funding, Scourfield could exercise enormous power over the directors of the companies under his supervision. Many felt they had no choice but to comply with his or Mills' demands.

100. Their motivation was greed. Although the Bank's internal investigations and the Deloitte investigation had proven inconclusive, the police uncovered evidence of huge rewards provided by Mills to Scourfield to effect his corruption. This took the form of money transfers, cash, expensive gifts, the use of an AMEX card for personal spending and unauthorised and inappropriately lavish hospitality, including foreign travel and sex with high class escorts⁵².
101. Scourfield eagerly consumed the monetary bribes fed by Mills and attempted to conceal and disguise their provenance. In doing so, he was assisted by his accountant, Jonathan Cohen of Brett Adams.
102. Mills knew he could rely on Scourfield. An e-mail from Scourfield to Mills of March 2006 reads, *"I'll always stick by you."*⁵³ **35/15/3013** In May of that year, Scourfield e-mailed Mills, *"I have been confirmed as grand wizard"*. Mills responded *"Great. Marry me!"* Scourfield replied, *"I thought we were already."*⁵⁴ **35/16/3877**
103. Scourfield was also close to Bancroft. He and his wife Jacqueline stayed at the Bancroft's villa on the Algarve in Portugal in 2004 and 2005.
104. In 2007, once Scourfield had left the Bank, Bancroft sent demands for payment to Scourfield for the trips to the sum of £11,412⁵⁵. Scourfield had a solicitor write to Bancroft over the matter, stating that the stays were not commercial in nature. Bancroft responded: *"if...your client considered it to be free hospitality then it should be easy to ascertain whether these were entered in the Bank's hospitality*

⁵² See Scourfield's benefit from the corrupt agreement section, below.

⁵³ ex.p.64449.

⁵⁴ ex.p.64454.

⁵⁵ XP 191910

register.”⁵⁶32/12/2875 Scourfield replied that he was “*shocked and saddened*” and, tellingly added, “*Jacquie and I regarded you and Beverley as friends but it is now apparent that our friendship was only convenient to you while I was employed at the Bank.*”⁵⁷32/6/2867

105. Some other employees of the Bank do not emerge well from the investigation, most particularly Paul Burnett, who was Scourfield’s immediate line manager. There is little doubt that his apparent lack of oversight was partly responsible for Scourfield’s ability to act in the way that he did and for as long as he did.

106. For example, although Scourfield’s lending was largely unauthorised, the rising drawn balances were in some instances visible, as they were recorded on the monthly ‘crib sheets’ submitted to Burnett. This was one of the triggers for Angus’ initial enquiries in 2006.

107. Had Burnett and others paid closer attention to the crib sheet figures, Scourfield’s activities may have been identified sooner. Burnett lost his position at the Bank as a result of his failures as a manager. ⁵⁸However, there is no evidence that Burnett or any other Bank employee (apart, obviously, from Dobson) was complicit in the corrupt agreement or the fraudulent trading that flowed from it; nor that anyone at the Bank other than Scourfield and Dobson benefited from their unlawful activities⁵⁹.

108. Equally, some of the Bank’s systems and processes undoubtedly contributed to Scourfield’s ability to behave dishonestly.

⁵⁶ XP 191689

⁵⁷ Letter to Bancroft, ex.p.173796. Other correspondence is at ex.p.173797-805. Scourfield was forced to borrow to pay his former friend.

⁵⁸ Burnett, st.p.3073. Robert Brown, who, like Scourfield, reported to Burnett felt that Burnett, “should have been more visible” but that he was, “very challenging when he reviewed a connection”, st.p. 717. McMillan’s view is that Burnett, “was culpable for not managing the book properly and thereby allowing a significant loss to the Bank over a period of several years”, st.p.1163.

⁵⁹ The suggestion, referred to in the Deloitte report that Burnett had gone to work for Mills after he left the Bank is unfounded. He worked for Craig Treharne for a time.

109. But no matter how robust the oversight and procedure, every organisation ultimately relies on the honesty and integrity of those operating within it. Scourfield was able to use his experience and relatively senior position to take advantage of what he knew were the vulnerable parts of the Bank's system. This was a case of him exploiting systemic and personnel weaknesses which he knew to exist; not a case of the Bank turning a knowing blind eye to his lending excesses.

David and Alison Mills' benefit from the corrupt agreement

- 110.** On its most basic level, Mills' benefit from his corrupt relationship with Scourfield took the form of favourable treatment in the allocation of work and the resulting excessive remuneration.
- 111.** After Scourfield had left the Bank, Mills sought payment for work he claimed had been done by Quayside in respect of IA customers. To support his case that there had been a mutual understanding that the Bank was liable for Quayside's fees, Mills sent Scott a list of, "*cases that we have been involved with on behalf of HBOS, during the last 3 years...[and] those businesses where we are effectively holding controlling shareholding on behalf of the bank.*"**2/4/405**
- 112.** The list contained details of no less than 32 corporate customers of the Bank. Mills added that, "*there have also been many other one off operational IBRs undertaken as single projects for the Bank, as well as temporary advice from our market experts.*"⁶⁰**2/5/408-411**
- 113.** Very large amounts of money were paid in fees to QCS by HBOS 'high risk' customers on whose behalf QCS was engaged and QCS in turn transferred a great deal of that money to the personal bank accounts of David and Alison Mills.
- 114.** Those personal accounts also received very considerable sums directly from some of those same HBOS 'high risk' clients, for example, Clode, Theros and Remnant. This is unusual to say the least, as all such fees and expenses ought to have been channelled through the relevant consultancy company.⁶¹
- 115.** Reaching a precise figure is not easy, but in general terms more than £28 million passed through the personal accounts of Mr and Mrs Mills or the accounts of various Mills' corporate entities such as QCS, Sandstone and Knightingale from HBOS

⁶⁰ E-mail from Mills to Scott and Angus of the 19th of March 2007 at ex.p.2326. Attached list is at ex.p.2330-8.

⁶¹ Mesher Mills report, page 16 (exhibit page 75443)

high risk clients. It is not suggested that Mr and Mrs Mills retained all of that money for their own personal benefits but they did benefit enormously. **DM & AM TABLE**

116. A document drawn up in anticipation of the sale of Quayside noted, “*DJM [Mills] currently draws approximately £300k pa from Quayside, plus any end of year bonus, which is granted at the discretion of DJM!*”⁶² **35/1/2931**

117. However, the fees paid by IA customers (or by the Bank on their behalf) to Mills direct, via Quayside, or via another Mills entity represented only part of Mills’ benefit from his relationship with Scourfield. This was more than a mere ‘cash for contracts’ arrangement between the two men.

118. What Scourfield gave Mills in addition to exorbitant fees was the opportunity to take control of the various businesses and, in some cases, to acquire ownership of them⁶³. Mills and his associates used the Bank’s customers and the Bank’s money dishonestly to enrich themselves unjustly.

119. For this reason, the case is just as much about what happened to the businesses under the mismanagement of Mills as it is about the corrupt relationship itself.

120. As I mentioned when outlining matters in brief, three companies have been selected from Scourfield’s IA portfolio to illustrate the activity which the prosecution suggests clearly amounted to fraudulent trading: Clode (count 2), Theros (counts 3 and 4) and Remnant (count 5).

121. Two Mills-controlled companies, The Sandstone Organisation Ltd (‘Sandstone’) and Knightingale Investments Ltd (‘Knightingale’), feature in the case time and again. The Crown contends that neither had a genuine commercial purpose.

⁶² ex.p.117448.

⁶³ See Mesher Mills report, para 3.7, ex.p.75433 for a table of Mills’ corporate ownership interests.

- 122.** In 2007, Mills suggested that the role of Sandstone was related to, *“those businesses where we are effectively holding controlling shareholding, on behalf of the Bank.”*⁶⁴ In his police interview, he elaborated on this arrangement, describing Sandstone as a *“shareholding depository”* and *“an appropriate vehicle to hold...shares”* to the Bank’s order⁶⁵.
- 123.** Angus comments on the propriety of Sandstone holding shares in IA customers for the Bank: *“This is a totally alien concept...I can see no legitimate reason for them to do so.”*⁶⁶
- 124.** On occasions both Sandstone and Knightingale borrowed from other banks⁶⁷ and then onward lent the same amount to Mills-related companies which were also HBOS IA customers whilst charging a fee for so doing⁶⁸. However, HBOS, via Scourfield, guaranteed the loans to the provider bank. By this device, although the loans would be a liability for HBOS via the guarantee, they would not outwardly appear to represent the advancing of further funds from HBOS⁶⁹.
- 125.** Mesher: *“These transactions meant that further borrowing could be provided to the subject companies effectively by HBOS but that the loans would not be physically made by HBOS, rather by Lloyds and Svenska with HBOS providing a guarantee to the funder.”*⁷⁰
- 126.** Sandstone and Knightingale were also used as conduits through which some of the proceeds from the corrupt relationship between Mills and Scourfield were

⁶⁴ ex.p.2326. Sandstone had an ownership interest in Bradman Lake, Seoul Nassau, Corporate Jet, Smollensky’s, Kangaroo Poo, De Lane Lea, Fransen and others.

⁶⁵ Tr.p.238, 279-80.

⁶⁶ Angus, st.p.532. HBOS had specific subsidiary companies to hold equity shares in debt for equity swaps.

⁶⁷ Lloyds for Sandstone and Svenska Handlesbanken for Knightingale.

⁶⁸ Sandstone lent to Bradman Lake (£2m), Corporate Jet and its subsidiary Euromanx Ltd (£8m plus). Knightingale lent to Smollensky’s. See December 2005 e-mail from Roger Hawes regarding an £8m loan from Sandstone to CJS, acknowledging the role of Lloyds and HBOS, which was apparently to fund the purchase of two aircraft, ex.p.60033. LS is cited as representing HBOS.

⁶⁹ For a diagrammatic representation of the arrangements, see Mesher, Mills report, para.7.15, ex.p.75481.

⁷⁰ Mesher, Mills report, ex.p.75480. See the Smollensky’s section, below, for a full treatment of the Svenska loan.

channelled. For example, large payments were made by Knightingale (1 for £125,000)**31/4/2818** and Sandstone (3 totalling £77,500)**31/4&5&6/2820-2825** to a company called Zudiki Investments Ltd ('Zudiki') between February 2005 and July 2006. Each of the four cheques had been signed by David Mills, his companies having been invoiced by Zudiki for 'consultancy services'.

127. Zudiki was registered in the name of Jacqueline Scourfield and she was the sole director. But Zudiki was nothing more than a slush company, established to enable Lynden Scourfield to receive and launder the proceeds of the corrupt relationship between him and David Mills⁷¹.

128. Knightingale also paid £125,000 directly to one of the Scourfields' personal bank accounts; whilst Sandstone paid £5,000 to a bank account in JS' name.

129. In addition, Knightingale paid Bancroft £25K and Cartwright received £10K from Sandstone.

130. Mark Dobson, a colleague of Scourfield in the IA division at HBOS, received corrupt payments from David Mills via Knightingale, which paid Dobson £30,000 in three instalments from December 2005 to October 2006.**11/2&3&4/1055-57**

131. Once again the cheques were signed by David Mills; once again the payments were euphemistically described as 'consultancy fees', this time in the Knightingale audit files prepared by Jonathan Cohen. This was a deliberate attempt to cover what Cohen must have known were corrupt payments.

132. However, in his police interview, David Mills contradicted the accounting records, saying that Dobson was a friend with "*some personal issues*" and that the payments were loans.

⁷¹ See Zudiki section below.

- 133.** The three payments spanned the period when Dobson was involved on behalf of the Bank in a Mills-related Welsh property deal known as St. David's Centre.
- 134.** St. David's Centre Ltd was the holding company for a shopping development in Swansea. In 2002, a Mills company called Keyside Developments Ltd⁷² bought the company from a subsidiary of HBOS called BLP⁷³ and another investor.⁷⁴ Keyside had apparently been identified as a potential purchaser by Dobson⁷⁵.
- 135.** As part of the sale agreement, BLP agreed to write off a loan owed to it from St David's Centre to the value of £858,000 in exchange for one 'C' share in the company⁷⁶. BLP then agreed to sell this 'C' share to Keyside for £1. Keyside then bought all the remaining shares for £100⁷⁷.
- 136.** This arrangement meant that Keyside paid £101 for the company and had the loan written off. Mesher: *"It is not clear what the commercial reason for this transaction was. I cannot identify why the existing shareholders...would agree to this transaction as there is no evidence that they gained anything from it."*⁷⁸
- 137.** Scourfield wrote to Mills and Keyside in December of 2002, providing indemnities from the Bank on behalf of the vendors in respect of the purchase⁷⁹.
- 138.** Keyside acquired the long lease, entitling it to collect the rents from units within the centre, but also responsibility for the outstanding £1.75m of senior debt to the Bank. Keyside sold the lease on the centre in January of 2005 to Zurich

⁷² A subsidiary of Quayside. Cohen dealt with the company accounts and the registered office was at Brett Adams' Manchester Square address.

⁷³ British Linen Properties plc, owned by British Linen Bank which was a subsidiary of HBOS.

⁷⁴ AWG Developments Ltd.

⁷⁵ McDonald, st.p.2139. He recalls meeting with Dobson and Scourfield at the centre in February of 2002 when it was agreed to pass the management of the Bank's interest to the High Risk team.

⁷⁶ The C share was created to represent the outstanding equity investment by BLP which had been injected into the company via shareholder loans from BLP, per McDonald, Ibid.

⁷⁷ Sale agreement at ex.p.87735. Signed by Mills for Keyside.

⁷⁸ Mesher Dobson report, ex.p.123731.

⁷⁹ ex.p.145967.

Assurance for £4.03m⁸⁰. £2.9m was received by Keyside, but, somewhat oddly, Quayside received £500k and Knightingale £530k.

139. Following the sale, in February of 2005, Keyside repaid the capital of the bank loan in the sum of £1.7m, but the £564,446 of accrued interest was written off. The Bank, *“has been unable to locate any documents which set out the reasons for the write-off or who authorised it.”*⁸¹ Mesher: *“the net proceeds [from the sale] are greater than the amount owing on the loan so it is not clear why it would be necessary for the bank to write off any interest...”*

140. In January of 2006, forms were filed at Companies House indicating that a charge over the assets of the St David’s Centre had been fully satisfied. The forms were signed by Mills, Roger Hawes (a solicitor at Burges Salmon who acted for Mills and who also enjoyed his largesse and who is awaiting trial for his part in laundering some of the proceeds of the corrupt agreement between Scourfield and Mills) and, significantly, Dobson on behalf of HBOS. This was incorrect. HBOS was not fully repaid, as over £560,000 of interest was outstanding.

141. Dobson told the Deloitte investigation that Quayside had been *“successful”* and that *“the bank was fully paid out”*. Mesher puts it differently: *“It would appear that the transaction was successful for the new shareholder, which was ultimately Quayside itself”*⁸². A £955,679 dividend was paid to Keyside (and therefore to Quayside and to Mills) for the year ending February 2006. (Keyside funds were used to pay more than £40K worth of DM’s AMEX card bills and over £28k was transferred to an offshore account of Bancroft.)

142. In December of 2006 in another corrupt transaction, Dobson was to authorise the payment to David Mills of £152,750 from Eyesaglow Limited.⁸³

⁸⁰ Contract of sale at ex.p.122262. The sale monies were paid into the bank accounts of Keyside, ex.p.146246, Knightingale, ex.p.143667 and Quayside, ex.p.14175, via Osborne Clark solicitors in February of 2005.

⁸¹ Harrington, st.p.2949.

⁸² Mesher Dobson report, ex.p.123732.

⁸³ See Eyesaglow section, below.

- 143.** Some £1.3 million gross was transferred from Sandstone to David and Alison Mills' accounts between September 2004 and December 2007 (£786,699 net).⁸⁴ (Sandstone also paid off £86K worth of Mills' credit card bills during the same period.)
- 144.** Cohen's firm Brett Adams had incorporated Sandstone on Mills' behalf. Cohen prepared the company's financial statements for the period 2004 to at least 2009 and acted as auditor from 2005 to 2007.
- 145.** Until 2008, Sandstone's shares were owned by a nominee company on Mills' behalf⁸⁵. Mesher would have expected Cohen to have satisfied himself that Mills had a legitimate reason for this arrangement, but no documentation has been identified within the Brett Adams records to assist on this point⁸⁶.
- 146.** Over £580K was transferred to the Mills' personal accounts from Knightingale from January 2005 onwards.
- 147.** In his police interviews, Mills said that he was proud of QCS and thought they did a good job⁸⁷. He claimed that they had successfully turned some companies around. He said that the Bank had no appetite to write off debt and would invest in the hope of recovering their money in the future.
- 148.** Mills said that Scourfield's team was too busy to do credit applications but that Burnett was aware of this and turned a blind eye. He said he couldn't believe that one 'rogue banker' was being blamed for the failings of the division.
- 149.** He said that QCS never received a complaint whilst it operated and that what he did was all visible to Edinburgh and above-board. He denied enjoying a corrupt relationship with Scourfield.

⁸⁴ Mesher Mills report, Appendix 5a, ex.p.75526.

⁸⁵ Devonshire Registrars Ltd.

⁸⁶ Mesher, Brett Adams report, para.4.13, ex.p.129907.

⁸⁷ Mills' interviews begin at tr.p.230.

150. Alison Mills was an important individual in the business empire headed by her husband and was complicit in the distribution of the proceeds of his corruption and in the fraudulent running of Clode Retail Finance Ltd ('Clode').

151. She had a well-established background in business and finance, having been employed by Close Brothers Group plc and Close Premium Finance (a merchant banking business specialising, amongst other things, in loans to small and medium-sized businesses) until the end of 2004. She clearly occupied a senior position, receiving salary payments of over £160K in the tax year ending April 2005.

152. It is against this type and level of business experience that her subsequent conduct in relation to the indicted matters must be assessed.

153. In due course she told the police: *"I was not involved in my husband's businesses. I played a supporting role as his wife"* and, *"It is a matter of public record which companies I held a position in...however, I was not involved in the day-to-day running or management of every one of these companies..."*⁸⁸

154. It is submitted that these assertions are far from the truth and were an attempt to distance herself from the fraudulent business activities of her husband. The accurate position is that Alison Mills held, at various times, the following positions of responsibility within corporate entities of evidential significance in this case:

COMPANY	POSITION	DATES
Quayside Corporate Services Limited	Director and Company Secretary	13 September 2004- 26 February 2008
Knightingale Investments Limited	Director	3 November 2004- Current

⁸⁸ Alison Mills interview, tr.p.934.

Sandstone Limited	Director	10 January 2005- Current
Keyside Developments Limited	Company Secretary	1 September 2004- 2 October 2007
Clode Retail Finance Limited	Director	15 March 2005- 28 June 2010
Richard Paffard Limited	Director	31 July 1994- 25 January 2000
St. David's Centre Limited	Company Secretary	10 November 2004- 22 July 2008
Monkey Puzzle Limited	Director	15 October 2009- Current

155. All of the above companies were owned and controlled by both David and Alison Mills. Alison Mills knew all about her husband's business activities, including his corrupt relationship with Lynden Scourfield at HBOS.

156. The multiplicity of her appointments to the boards of the key Mills' corporate vehicles, together with her level of financial reward point to her involvement being more than merely 'convenient' for tax or other reasons.

157. Quayside was, of course, the company which was central to the corrupt arrangement between David Mills and Scourfield. In addition to being a director and the Company Secretary, Alison Mills appeared on the Quayside website as 'Head of Sales and Marketing'⁸⁹ and worked at the firm's Gloucester Place offices.

⁸⁹ ex.p.77012.

- 158.** A document produced for the proposed sale of Quayside noted, *“Alison Mills receives fees from the Company for marketing work she carries out, on an ad hoc basis, through her unincorporated business which trades under the name “Words & Pitches”. The amount of work Alison carries out varies, although the current monthly average that she charges is £2,500.”*⁹⁰
- 159.** She was also the sole director and shareholder of a company called Wordsters Ltd (‘Wordsters’), which was incorporated in October of 2005. Wordsters received funds from Quayside for Alison Mills’ services, totalling over £85,000 for years ending June 2007 and 2008.
- 160.** She also received substantial remuneration for her role in Clode⁹¹.
- 161.** There is abundant evidence that Alison Mills was an active participant in the organisation of the social calendar that ensured that the Mills’ business contacts, including several of the co-defendants, remained loyal. Her 40th birthday trip to Barbados, attended by the Scourfields, the Bancrofts, Roger Hawes and others is a prime example⁹².
- 162.** She organised trips to Ascot, on behalf of Quayside, to which the Scourfields and Dobson were invited⁹³.
- 163.** She knew Lynden Scourfield, she knew the position he occupied within HBOS and she knew how vital he was in the overall scheme of things. Scourfield was the HBOS manager who sanctioned huge funding of Clode, for which she worked and of which she was a director, and for QCS, for which she also worked and was also a director.

⁹⁰ ex.p.117308.

⁹¹ See Clode section, below.

⁹² See below.

⁹³ See ex.p.123799-820.

164. Scourfield was the goose who was laying the golden eggs; David Mills just had to keep feeding him. And feed him he did.

Michael Bancroft⁹⁴

- 165.** Michael Bancroft had a background in the textile industry and was engaged by Mills as a Quayside consultant to Theros / FTR / Magenta / MSG, and Remnant Media, amongst other companies.
- 166.** He was Mills' man on the ground in these businesses, overseeing their demise and enriching himself in the process. He became a director of many of the companies⁹⁵ and a shareholder in some⁹⁶.
- 167.** He received at least £416,034 from Quayside into his personal accounts between August 2005 and May 2007. In addition, he received £86,056 directly from FTR / Magenta Studios between December 2003 and October 2006 and spent over £100,000 on an FTR credit card, much of which was clearly personal expenditure⁹⁷. He also received £102k directly from Simon Jay between March 2006 and June 2008⁹⁸. **MB TABLE**
- 168.** In addition he received two payments totalling £91K from a Burges Salmon client account under the supervision of Roger Hawes, known as QCS / Clothing Proceeds Ltd. This was MSG company money to which he was not entitled⁹⁹.
- 169.** Between January of 2002 and July of 2010, his account also received £231,822 in unidentified credits, the majority of which appear to be branch deposits¹⁰⁰.
- 170.** MB also received circa £300k from Quayside into the off-shore account of an Algarve-based villa rental company he operated called Crown. Of that figure, over £90k was invoiced in connection with Theros and MSG, over £35k in connection with

⁹⁴ See Mesher, Bancroft report at ex.p.75289 for background and financial analysis.

⁹⁵ See Mesher, Bancroft report at para.3.16, ex.p.75299, and Appendix 3, ex.p.75341, for a full list.

⁹⁶ For example, Theros and Simon Jay.

⁹⁷ See Theros section, below.

⁹⁸ See Simon Jay section, below.

⁹⁹ See Clothing Proceeds section, below.

¹⁰⁰ See Mesher, Bancroft report, Appendix 14, ex.p.75360.

Remnant and over £18k in connection with another HBoS company named Cotton Bottoms. The same Crown account also received over £26k direct from Simon Jay and over £28k from Keyside.

171. A striking feature of the case is the disregard in which Bancroft was held by those with whom he worked. He is repeatedly described as an arrogant and unpleasant bully who acted cynically and manipulatively to ensure that he got his way.

172. Bancroft was an old associate of Cartwright, whom he had known since at least the 1980s.¹⁰¹

173. In his police interviews, Bancroft said that he *“worked very hard, devoting many hours in attempting to assist management...I do not regard my remuneration...to be excessive, I consider that I was fully entitled to receive that remuneration. I categorically deny that I have been involved in any criminal activity whatsoever.”*¹⁰²

¹⁰¹ See Ritz Design section, below.

¹⁰² tr.p.562.

John Anthony Cartwright¹⁰³

- 174.** Tony Cartwright was a self-taught accountant and had experience administering the finances of companies. He knew Bancroft from their time together in the 1980's and early 1990's¹⁰⁴ and David and Alison Mills from the early 1990's.
- 175.** He was contracted by Mills and Bancroft to prepare management accounts for Magenta and also had involvement with MSG/Clothing Proceeds, Simon Jay, Remnant, Corporate Jet and Flip Media. He connived in the fraudulent trading at Magenta and received unauthorised payments as a result.
- 176.** Cartwright received £16,556 into his personal account from Quayside. He also received £123,007 direct from FTR / Magenta, £5,000 direct from Remnant, £21,346 from Flip Media and £3,468 direct from Simon Jay. In addition he received £32,571 from the Burges Salmon Clothing Proceeds client account and £4,980 from Bancroft. There were also unexplained deposits amounting to over £26,000, one of which can be matched to a Clothing Proceeds invoice. **TC TABLE**
- 177.** Analysis suggests Cartwright's receipts during 2005 to 2010 were far higher than the amount he declared to HMRC for tax purposes during those years: the difference is more than £200,000.

¹⁰³ See Mesher, Cartwright report at ex.p.167060 for background and financial analysis.

¹⁰⁴ See Ritz Design section, below.

Mark Dobson¹⁰⁵

- 178.** Mark Dobson worked in HBOS' cash flow finance department before moving to Impaired Assets, initially working in Scourfield's Reading office before moving to Bishopsgate in the City as a director.
- 179.** Dobson had responsibility for managing both the Eyesaglow¹⁰⁶ and the St David's Centre¹⁰⁷ accounts on behalf of HBOS. In both cases, Mills derived a benefit from transactions overseen by Dobson. In return, Dobson received £30,000 in corrupt payments via Mills' company Knightingale.
- 180.** HBOS commenced disciplinary proceedings against Dobson in May of 2012 in relation to Eyesaglow and he was dismissed for gross misconduct in June of that year¹⁰⁸.
- 181.** Dobson made no comment in his police interviews.

¹⁰⁵ See Mesher, Dobson report at ex.p.123710 for background and financial analysis.

¹⁰⁶ See Eyesaglow section, below.

¹⁰⁷ See above.

¹⁰⁸ Harrington, st.p.3273.

Jonathan Cohen¹⁰⁹

- 182.** Jonathan Cohen (55) was a founding partner of Brett Adams chartered accountants¹¹⁰.
- 183.** The firm had a long-established business relationship with Mills and there is little doubt that the income derived from Mills-related work accounted for a large slice of Brett Adams' turnover.
- 184.** Additionally, most of the Mills-related companies for which Brett Adams worked as auditors, accountants and tax advisors banked with HBOS, were considered 'high risk' and were managed from Reading by Scourfield¹¹¹.
- 185.** The firm also dealt with the tax affairs of the Mills and of the Scourfields' company Zudiki. Quayside and Sandstone both had their registered offices at Brett Adams' address and the firm was the company secretary of Sandstone¹¹².
- 186.** By 2005, Brett Adams itself was experiencing severe financial difficulties. It too used HBOS for its business banking. Because of the level of indebtedness to the Bank (rising to circa £700,000 by November of 2006), HBOS began to refuse to honour Brett Adams cheques and transferred the firm's account to IA in Reading.
- 187.** Scourfield was the relationship manager and he sanctioned extended borrowing facilities to the firm. Cohen accepted a loan from Clode to prop up his business at a time he was auditing the firm¹¹³.
- 188.** It was, undoubtedly, the combination of heavy reliance on Mills / Scourfield HBOS IA work and the precarious state of his firm's finances that led Cohen to

¹⁰⁹ See Mesher, Brett Adams report, ex.p.129885 for background and an exploration of the key issues.

¹¹⁰ Brett Adams was established in 1996 and located at Manchester Square in Marylebone. The other partner was Steven Davidson. It was through Davidson that Mills was introduced to the firm.

¹¹¹ See table at para 2.10 of Mesher's report for an overview of some of the Mills entities for which Cohen was retained.

¹¹² Through Manchester Square Registrars Limited, until October 2006. This was the same service provided to Zudiki, see below.

¹¹³ See Clode section, below.

participate in what he must have known were criminal activities. He willingly provided a professional shield to conceal and / or disguise transactions and activities which were wholly fraudulent.

189. Bizarrely, given that he was the auditor for Quayside, Cohen appears to have also worked for the firm as a consultant¹¹⁴. Mesher's understated comment is that this would, "*represent a significant conflict of interest.*"

190. He was involved, amongst other things, in concealing Scourfield's corrupt payments through Zudiki¹¹⁵, the operation of Clode as a bank within the Bank¹¹⁶ and with the improper conversion of directors' loans involving Simon Jay¹¹⁷.

191. Mesher has identified a number of transactions and activities which he considers should have led Cohen to, "*seriously consider the need for a SAR*"¹¹⁸.

¹¹⁴ See 'QCS, An Introduction' at ex.p.78049. Cohen was also included in an invoice of August 2003, sent by Quayside to Scourfield for a day's work at Theros and MSG.

¹¹⁵ See the Zudiki section, below.

¹¹⁶ See the Clode section, below.

¹¹⁷ See the Theros section, below.

¹¹⁸ Mesher Brett Adams report, para.5.9, ex.p.129942.

Roger Hawes

- 192.** Roger Hawes (55 – 5th December 1960) was a partner at Burges Salmon LLP solicitors in Bristol until he left the partnership in March of 2010. He will be tried next year in a separate trial.
- 193.** He acted on behalf of David Mills and his various business interests and held a wide ranging power of attorney. He knowingly permitted a client account over which he had supervision to be used improperly to dissipate company monies to Mills, Bancroft, Cartwright, and associated entities¹¹⁹.
- 194.** He was undoubtedly close to Mills, attending Alison Mills' fortieth birthday in Barbados, Ascot and various other social engagements¹²⁰. He also continued to associate with and enter into business transactions with Mills following the latter's arrest in 2010.

¹¹⁹ See Clothing Proceeds section, below.

¹²⁰ A flavour of the relationship he enjoyed with Mills and Scourfield can be gleaned from an e-mail from Scourfield of May 2005: "Roger How about a night out in London/Bristol you me and Millsie?" to which he replied "bloody good idea! I'm on the case" ex.p.64491.

Ritz Design plc: Bancroft's and Cartwright's dishonest past¹²¹

~~195. — Bancroft and Cartwright were no strangers to the misappropriation of company funds. In the late 1980's and early 1990's, Bancroft was the Chairman and Chief Executive of a textile business called Ritz Design Group plc ('Ritz'). Cartwright was the Finance Director¹²².~~

~~196. — In 1991, the company auditors became aware¹²³ that Bancroft and, to a far lesser extent, Cartwright had charged personal expenditure to Ritz and that Bancroft had also received hidden 'kickbacks' from suppliers.~~

~~197. — Ritz's then solicitor, Peter Jay, was told by Bancroft that, "it was correct that he had taken the money, but his view was that he owned the company so it was okay to do what he had." Jay told Bancroft that he didn't own the company,¹²⁴ that it was a plc and that he therefore had responsibilities to shareholders and others¹²⁵.~~

~~198. — Jay put it to Bancroft's solicitor that Ritz would not report the matter to the police if the money was re-paid. After initially claiming that the Ritz board knew of his activities, Bancroft formally accepted his wrongdoing, resigned from the board and entered into an agreement to re-pay the funds¹²⁶. Cartwright did likewise. The episode was recorded in the 1992 directors' report and audited financial statements¹²⁷.~~

~~199. — Cartwright assisted the company and the auditor by preparing a list of fraudulent invoices and, in an affidavit drawn up as part of his settlement,¹²⁸ explained how Bancroft had initially instructed him to arrange for invoices for heating oil used at his home to be addressed to the company. Over time, the~~

¹²¹ Not to be opened; to be the subject of a bad character application in due course.

¹²² See Underhill for an overview, st.p.2772. The Ritz investigation file is at ex.p.138931 onwards.

¹²³ Initially through the Inland Revenue making enquiries into Ritz's tax liabilities.

¹²⁴ Bancroft had an approximately 27% shareholding at the time.

¹²⁵ Jay, st.p.925.

¹²⁶ Bancroft's agreement is at ex.p.139112.

¹²⁷ ex.p.137149, under 'Significant Events'.

¹²⁸ Dated the 21st of November 1991, at ex.p.139150.

amounts of personal expenditure by Bancroft and charged to the company increased. Cartwright had raised concerns with Bancroft as the sums became substantial, but felt that if he did not comply he would lose his job.

200. — A very large amount was spent on building, decorating and interior design work carried out to Bancroft's then home 'Faddiley Hall' in Cheshire, on furniture for his study and on home insurance.

201. — The Ritz auditor, Stephen Wilkinson, recalls that one of the false invoices purported to be for repairs to the factory roof in Runcorn, when in fact it was to cover the cost of Bancroft's swimming pool at Faddiley Hall. "At the time I was appalled that they had committed such a blatant fraud against the company and colluded with others to hide it from the other directors, employees and shareholders."¹²⁹

202. — There were also charges in connection with family holidays in Europe and stays at Gleneagles. Bancroft had also abused his company Barclaycard and AMEX cards. During a search of Bancroft's office, Jay discovered invoices for a flat paid by Ritz. He understood that Bancroft's then mistress, a lingerie model, lived in the flat.

203. — Cartwright said that he had been encouraged by Bancroft to pass various aspects of his own personal expenditure through the company. He had decorating work carried out to his home and took a holiday, the costs of which were both borne by Ritz.

204. — A senior employee of Ritz, Stephen Wilkinson,¹³⁰ who also admitted wrongdoing, explained in his affidavit¹³¹ that three Japanese fabric suppliers paid hidden commissions to himself and Bancroft. Initially, payment was made in cash via brown envelopes handed over at meetings. Bancroft would receive two thirds. Later,

¹²⁹ Wilkinson, st.p.3298.

¹³⁰ Not the same Stephen Wilkinson who was the auditor.

¹³¹ ex.p.139141-8.

~~the money would be paid direct to a Swiss bank account set up at Bancroft's suggestion. Wilkinson would withdraw the cash in Zurich and give it to Bancroft at Faddiley Hall.~~

~~205. — An investigation by Touche Ross¹³² attempted to quantify the level of misappropriation. It identified over £300,000 of private expenditure by Bancroft and a further £159,000 in undisclosed commissions. Cartwright's benefit was circa £12,000.~~

~~206. — The Ritz financial statement notes that Bancroft was expected to re-pay £1.465m by way of settlement¹³³. The agreed sum actually paid was £645,000¹³⁴. The re-payment was achieved by the company being sold and Bancroft repaying Ritz from his proceeds as a major shareholder. He retained his excess profit and moved to Ireland.~~

~~207. — The parallels with Bancroft's and Cartwright's activities ten years later are obvious: a complete disregard for company law and the proprieties of business, a casual willingness to misappropriate large sums of company money for personal gain and a determined effort at concealing the wrongdoing.~~

~~208. — Years later, Jay was astonished to find Bancroft involved with companies through HBOS, as his Ritz activities would not have been hard to trace¹³⁵.~~

~~209. — Despite this episode, in his police interview in respect of the current allegations, Bancroft said, "My business expertise is in textiles. Throughout the 80s and 90s I gained a lot of experience in turning round companies in the textile industry and improving their financial results."¹³⁶~~

¹³² ex.p.138890.

¹³³ ex.p.137149.

¹³⁴ Made up of the principal sum of £510,000 plus interest, ex.p.139114.

¹³⁵ See Remnant Media section, below.

¹³⁶ tr.p.562.

LYNDEN SCOURFIELD'S BENEFIT FROM THE CORRUPT AGREEMENT

Introduction

210. Lynden Scourfield's benefit from his corrupt arrangement with David Mills came in the form of financial payments, seemingly endless hospitality (including sexual services) and gifts. It is not possible to establish the precise value of this benefit (much, no doubt, was paid by way of cash 'bungs' and many of the gifts will now be untraceable), but the evidence from the police investigation demonstrates that he was very well rewarded for his corrupt assistance to Mills.

211. Some sense of part of Scourfield's benefit can perhaps be gained from mortgage documents. In March of 2003, Mills wrote to the Portman Building Society in support of a mortgage application made by the Scourfields. Mills stated that Scourfield was, "*due to receive a guaranteed bonus of a minimum £20,000 this year*", which would be paid in June or July¹³⁷.**32/1/2859**

212. In a second mortgage application to the Portman, dated the 24th of May 2004, Scourfield claimed to undertake "*Private Consultancy for Quayside Corporate Services*", earning £50,000 per annum.

213. Again, Mills provided a letter in support of the application. On the 17th of May 2004, he wrote, "*I confirm Mr Scourfield received a consultancy income of £50,000 for year-end December 2003. In addition, I confirm that consultancy fees for the period year-end December 2004 will be a minimum of £50,000 but it is anticipated to be in the region of £50,000-£100,000.*"¹³⁸**32/3/2864**

214. Scourfield's HBOS salary averaged £88,598 over the five tax years 2003 to 2007¹³⁹ and analysis of the Scourfields' bank accounts for the period September 2004 to July 2007 shows explained income of £340,142 (salary, property, shares, etc.)

¹³⁷ ex.p.75986.

¹³⁸ ex.p.75994.

¹³⁹ See Mesher Scourfield report, Appendix 3b, ex.p.75909.

- 215.** The same analysis also shows unexplained income of £348,887¹⁴⁰.
- 216.** £125,000 consisted of funds transferred from Mills' Knightingale Investments Ltd direct to one of the Scourfields' joint accounts¹⁴¹. Two Knightingale cheques to 'Mrs J. A. Scourfield', each for £62,500, were signed by David Mills¹⁴².
- 217.** £30,000 was transferred from Quayside Corporate Services' account and £5,000 was transferred from the Sandstone organisation account to one of Jaqueline Scourfield's accounts
- 218.** £134,194 consisted of funds transferred to the Scourfield's personal bank accounts and credit cards from Zudiki Investments Ltd.
- 219.** £54,693 of that unexplained income is also unidentified, being made up of cheque and cash deposits. The largest deposit was for £24,000 on the 7th of June 2007, after Scourfield had left the Bank. **LS TABLE**

Zudiki Investments Limited

- 220.** Zudiki Investments Limited ('Zudiki') was established in July of 2003¹⁴³. Documentation within the Brett Adams files shows that Cohen was responsible for incorporating the business.¹⁴⁴
- 221.** Jacqueline Scourfield was appointed as the sole director and 50% shareholder. The remaining shares were held by Manchester Square Registrars Limited ('MSR'), which was a nominee company operated by Jonathan Cohen and his

¹⁴⁰ Mesher Scourfield report, ex.p.75156

¹⁴¹ Barclays account 60807397. Statement showing receipts at ex.p.79127.

¹⁴² Svenska cheques drawn on the Knightingale account, at ex.p.68941 (28th of May 2005) and ex.p.68938 (4th of June 2005).

¹⁴³ Ex.p.134819. It was apparently named after one of Jacqueline Scourfield's dogs: tr.p.763.

¹⁴⁴ See ex.p.134813 and ex.p.134818 for letters from Brett Adams to Jacqueline and Lynden Scourfield respectively, noting in both cases that the incorporation of Zudiki had been put in hand "on your behalf".

partner in Brett Adams accountants, Steven Davidson¹⁴⁵. MSR was also the company secretary of Zudiki. In his police interview, Cohen was unable to explain why MSR would hold shares in Zudiki.¹⁴⁶

222. The account opening documents for Zudiki's NatWest business account indicate that its main business was to be "*property consultancy*". The 2005 accounts note that, "*The principal activity of the company is that of consultants.*"

223. That was a fiction. The reality was that Zudiki was set up in order that Lynden Scourfield could receive some of the money given to him by David Mills as a result of their corrupt relationship and in an attempt to disguise or conceal such payments. Its sole purpose was money laundering. It was, as I described it earlier, a slush company.

224. Analysis of Zudiki's bank records show that the only income (apart from interest) to the business throughout its life was from three of David Mills' corporate entities: a total of £227,500, transferred between February 2005 and July 2006¹⁴⁷.

225. Three Sandstone cheques, the first for £45,000 dated the 8th of February 2005 and credited on the 9th of February, the second for £7,500 dated the 21st of February 2006 and credited on the 23rd of February and the third for £25,000 dated the 4th of July 2006 and credited on the 11th of July, were all signed by David Mills.¹⁴⁸ **31/5&6&7/2820-25**

¹⁴⁵ For reasons that are not entirely apparent, MSR was wholly owned by the wives of Cohen and Steven Davidson, but Cohen confirmed in his police interview that he and Davidson controlled the company, Cohen interview, tr.p.1548.

¹⁴⁶ Mesher Brett Adams report, ex.p.129908. No documentation has been found in the Brett Adams Zudiki files to assist on this point. Compare the similar position with respect to Sandstone, above.

¹⁴⁷ See Mesher Scourfield report, Appendix 14 at ex.p.75968. There was £757 worth of interest, giving £228,257 of total income.

¹⁴⁸ Cheques bearing Mills' signature and corresponding credit slips bearing Jacqueline Scourfield's signature are at ex.p.64359/8, 64407/6 and 64414/3.

- 226.** A Kingtongale cheque for £125,000, dated the 28th of May 2005 was credited to the Zudiki account on the 1st of June 2005. David Mills signed it.¹⁴⁹**31/4/2818-19**
- 227.** A Quayside cheque for £25,000, dated the 26th of October 2005 and credited on the 3rd of November was signed by David Mills.¹⁵⁰**31/8/2826-27**
- 228.** These were all corrupt payments from Mills to Lynden Scourfield who, with the assistance of Jonathan Cohen, attempted to provide cover for these payments.
- 229.** A document, dated the 26th of May 2004, was found within the Brett Adams file for Quayside¹⁵¹. It purported to be an invoice for £10,000 from ‘Zudiki Corporate Services’ at the Scourfields’ home address, to Quayside for, *“secretarial and administrative services provided for the 5 month period ended 31 May 2004.”***31/11/2830**
- 230.** The invoice bears a handwritten annotation that it was paid by cheque number 010344. Mesher has identified that amount leaving the Quayside account on the 3rd of June 2004 the payment having been credited to JS’ NatWest account on 1st June¹⁵².
- 231.** The police found a document on the Scourfields’ home computer purporting to be an invoice for £20,000 from ‘Zudiki Investments’ to Quayside for six months of “consultancy services” from April to September of 2004.¹⁵³**31/10/2829** There was no transfer from Quayside to Zudiki in this sum but on 15th November such an amount was credited to JS’ NatWest account.¹⁵⁴

¹⁴⁹ Cheque bearing Mills’ signature at ex.p.64380 and credit slip bearing Jacqueline Scourfield’s signature at ex.p.64379

¹⁵⁰ Cheque bearing Mills’ signature at ex.p.64391 and credit slip bearing Jacqueline Scourfield’s signature at ex.p.64390.

¹⁵¹ Ex.p.132449.

¹⁵² CDG/75; part of NAE 17 to be served

¹⁵³ ex.p.83165.

¹⁵⁴ CDG/75; part of NAE 17 to be served

- 232.** And another document on the Scourfields' home computer purported to be an invoice for £50,000 from Jaqueline Scourfield at 'Zudiki Investments Ltd' to Sandstone for "*consultancy services provided for the period December 2004 to 1 February 2005*".¹⁵⁵**31/9/2828** There was, in fact, no transfer from Sandstone to Zudiki in that sum.
- 233.** However, there was a payment of £5,000 from Sandstone's account to Mrs Scourfield's account by cheque on the 31st of January 2005, received by Mrs Scourfield on the 27th of that month. When added to the £45k Sandstone cheque referred to above, this may represent the settlement of this invoice¹⁵⁶.
- 234.** None of the three documents were to be found within the Brett Adams files for Zudiki. Nor is there any suggestion within those files that Zudiki did in fact provide consultancy, secretarial or administrative services to any of Mills' companies or at all.
- 235.** Quayside was Mills' turnaround consultancy business. Knightingale and Sandstone were Mills corporate entities whose legitimate business purposes were unclear¹⁵⁷. All three businesses were, of course, intimately involved in the wider fraudulent activity. There was no legitimate commercial reason why Mills or any of his companies would have transferred large sums of money to Zudiki or to Jacqueline Scourfield and no question but that no work was undertaken on their behalf by Mrs Scourfield or her company. This was corruption; plain and simple.
- 236.** Analysis of the tax records of Zudiki supports the fact that it was a sham company. The only income declared to HMRC was £20,000 between the 9th of February 2005 and the 31st of July 2005. No income was declared for the periods before or after this. As stated above, £227,500 had in fact been received from Mills' three businesses over the course of Zudiki's existence. Further, £170,000 of that

¹⁵⁵ ex.p.83167.

¹⁵⁶ Mesher Scourfield supplementary report, para. 3.6.

¹⁵⁷ See Mesher Mills report, paras.6.28, ex.p.75476 and 7.54, ex.p.75489.

income fell during the 50 days' period between the 9th of February and the 31st of March 2005.

237. Throughout this time Jonathan Cohen was the accountant for all of the corporate protagonists in these transactions: Zudiki, Quayside, Knightingale and Sandstone. Further, Brett Adams dealt with the personal tax affairs of both the Mills' and the Scourfields. There can be no doubt but that he was fully aware that these payments had nothing to do with consultancy services.

238. Indeed, Cohen was complicit in attempting to disguise some of the payments to Zudiki and Jacqueline Scourfield by means of a false entry in the Sandstone accountancy records.

239. The Zudiki nominal account in the Brett Adams Sandstone files for 2005 shows a "*dividend to js*" of £310,000 on the 31st of December 2005¹⁵⁸. **31/20/2841-42**

240. This was a journal entry that enabled £45,000 of the funds from Sandstone to Zudiki, £125,000 of the funds from Knightingale to Zudiki and the direct payment of £125,000 from Knightingale to the Scourfields' joint account, together with a further £15,000 which the records suggest was also paid to Jacqueline Scourfield, to be disguised as a 'dividend' to Jacqueline Scourfield declared by Sandstone. This 'dividend' was also disclosed on the Sandstone financial statements for the year ending December 2005.¹⁵⁹

241. Dividends are distributions to the shareholders of a company. At that time, all of the shares in Sandstone were owned by Devonshire Registrars Limited, which held the shares as a nominee company for David Mills as the ultimate beneficial owner¹⁶⁰.

242. It was impossible, therefore, for Jacqueline Scourfield to receive a dividend from Sandstone as she was not a shareholder.

¹⁵⁸ ex.p.133516-7.

¹⁵⁹ ex.p.133451.

¹⁶⁰ Mesher Mills report ex.p.75477. Finger, st.p.2487-90 and 2656.

243. Despite this, Jonathan Cohen wrote to David Mills on the 21st of September 2006, enclosing full and abbreviated accounts, a letter of representation, minutes of a Sandstone board meeting “*regarding the dividend paid and the waiver*” and a “*dividend voucher*”, all of which he asked Mills to sign and return to him¹⁶¹.

31/22/2844

244. The minutes of the 3rd of June 2005 board meeting, signed by Mills and attended by him alone, record that, “*It was resolved to pay a net dividend of £310,000 to the members standing on the Register as at June 2005. It was noted that David Mills waived his right to receive a dividend.*”¹⁶²**31/23/2845** The dividend voucher purports to show that Jacqueline Scourfield held 50 shares in Sandstone (half the company) and so would receive the entire £310,000 dividend¹⁶³.**31/24/2846** That was a fiction.

245. The annual returns for Sandstone for this period clearly show that Devonshire Registrars was the only shareholder¹⁶⁴. That position only altered in 2008. Those basic financial documents would obviously have been familiar to Cohen as the firm’s accountant. Brett Adams is named as the contact on the tax returns which record Brett Adams’ Manchester Square address as the Sandstone registered office. Manchester Square Registrars was the company secretary for Sandstone, just as it was for Zudiki.

246. If he had been acting honestly, Cohen might have been expected to ask the basic questions: ‘*why does my firm’s bank manager’s wife suddenly own half of a “holding company”*’¹⁶⁵ *operated by my firm’s largest client, David Mills, and why is he giving her the entire dividend of £310,000?*

¹⁶¹ Found within the Brett Adams tax files for Sandstone, ex.p.132925. Mills has annotated, signed and returned the letter.

¹⁶² ex.p.132965. Only Mills was shown as present for this meeting which had apparently been held at his home address in Chorleywood.

¹⁶³ ex.p.132966.

¹⁶⁴ Those for year ending 2004 are at LWF/2, ex.p.123502 and for 2005 at LWF/3, ex.p.123508.

¹⁶⁵ ex.p.135721.

- 247.** In 2004 Brett Adams, on behalf of Mills, had approached the accountancy firm who owned Devonshire Registrars¹⁶⁶ and asked whether they would be prepared to hold all of the shares in Sandstone for Mills as a nominee company. Cohen knew one of the partners at the firm, Laurence Finger, socially.
- 248.** Additionally, within the Brett Adams Sandstone records is email correspondence in January confirming that Devonshire Registrars, “...hold 100% of the issued share capital solely to the benefit of David John Mills.”¹⁶⁷¹⁶⁸.
- 249.** Cohen’s subsequent involvement in creating the ‘dividend’ in favour of Jacqueline Scourfield must be viewed in the context of this knowledge.
- 250.** Laurence Finger notes that during the period that Devonshire Registrars held the shares in Sandstone, they were never notified that any dividends had been voted or paid by the company. He would have expected to be informed of any dividends due for payment, not least to comply with his firm’s anti-money laundering responsibilities¹⁶⁹.
- 251.** Mesher would have expected Cohen to have found the dividend payment “*highly irregular*” and, without any explanation for the wider Zudiki transactions in the Brett Adams files, he concludes that Cohen should have filed a SAR¹⁷⁰.
- 252.** In the Brett Adams audit files for Sandstone for 2006, the Sandstone payments of £7,500 and £25,000 to Zudiki are included in an analysis of the directors’ current account. They are accounted for as amounts owed by Mills to Sandstone, suggesting that Sandstone had paid Zudiki on behalf of Mills.¹⁷¹

¹⁶⁶ SRLV Chartered Accountants.

¹⁶⁷ ex.p.135718.

¹⁶⁸ ex.p.135717.

¹⁶⁹ Finger, st.p.2656.

¹⁷⁰ Mesher, Brett Adams report, ex.p.129914.

¹⁷¹ Mesher Scourfield supplementary report, para.5.21, ex.p.123689.

- 253.** Zudiki was dissolved in April of 2008¹⁷². In July of 2007 LS wrote to Cohen to arrange for the winding up of the company “*as the business has effectively been dormant*”¹⁷³.
- 254.** In his police interview¹⁷⁴, David Mills provided an explanation for the payments from his three businesses to Zudiki and to the Scourfields direct. He said that they related to a property deal he had concluded involving the St. David’s Centre in Swansea.
- 255.** Mills claimed that Lynden Scourfield had offered the “*expert*” assistance of his Welsh uncle who was involved in properties. As a result of his “*specialist advice*”, ‘uncle’ Scourfield was entitled to a third of the £750,000 profit from the deal and Mills presumed that the Scourfields would have paid uncle from the monies he had transferred to Zudiki.
- 256.** Mills’ account is obviously completely at odds with the three purported Zudiki ‘invoices’. It also does not correspond to what is known about the St. David’s Centre transaction, which involved a Mills business called Keyside Developments Ltd buying a shopping centre from a subsidiary of HBOS. The venture did not involve Knightingale or Sandstone¹⁷⁵. There are also no records of any payments being made by the Scourfields to Lynden’s uncle.
- 257.** Moreover, Mills’ explanation does not account for the full £310,000 dividend or the £352,500 of payments from his companies to the Scourfields and Zudiki.
- 258.** A further difficulty with Mills’ explanation is the evidence of uncle Scourfield himself. Lyn Scourfield is Lynden’s uncle and he is Welsh. However, he states: “*I have never had any involvement in any development called ‘The St. David’s Centre’ and I*

¹⁷² ex.p.134618.

¹⁷³ ex.p.134628.

¹⁷⁴ David Mills interview, tr.p.442-449.

¹⁷⁵ The St. David’s Centre topic is dealt with in the Mills benefit section, above.

have never received any payments from either Lynden Scourfield or his wife Jacqueline in relation to any consultancy work.”¹⁷⁶

259. David Mills lied to the police in an attempt to cover what he knew was a fraudulent arrangement and one which exposed the mechanics of the distribution of some of the proceeds of his and Lynden Scourfield’s corrupt agreement.

260. In his police interview, despite accepting that he had a duty as the firm’s accountant to ensure that all monies passing through Zudiki were legitimate, Cohen claimed not to know the nature of the business and was not clear as to whether his Brett Adams files would reveal documentation to explain the payments¹⁷⁷.

Bradman Lake Group, Seoul Nassau, Foreign Travel and Mills’ American Express spending on Scourfield and others

261. Cash transfer was not the only way in which David Mills ensured that Scourfield and others were rewarded for their efforts and kept loyal.

262. Mills arranged for Scourfield to receive free travel at the expense of a company called Bradman Lake Group Ltd (‘BLG’) and allowed him to charge large amounts of spending to his American Express account.

263. Bradman Lake was an engineering company. Based in Bristol, it also had operations in Charlotte in North Carolina, USA and in Germany. Mills had become a director in the late 1990’s through his friendship with the then chairman, Graham Hayes. The company banked with HBOS and Scourfield had responsibility for the account. It was through Bradman Lake that Mills and Scourfield first met.

264. Scourfield began to travel abroad, ostensibly on Bradman Lake business¹⁷⁸. This in itself was completely improper. These trips were undisclosed to and

¹⁷⁶ Lyn Scourfield, st.p.3114.

¹⁷⁷ As noted above, only one purported Zudiki invoice was found in the Brett Adams files.

¹⁷⁸ See travel schedule SAF/1, ex.p.65911-53.

unauthorised by Scourfield's managers at the Bank. Had they been asked, they would have refused permission. Scourfield's duty was to ensure that HBOS' interests in a given customer were protected and not to involve himself in the day-to-day running of the customer's business.

265. Worse still, the trips were paid for by Bradman Lake through Mills and not re-funded by Scourfield or by HBOS.

266. Bradman Lake was not a firm in rude financial health and could ill-afford corporate largesse. It had entered HBOS Impaired Assets in late 1999 and, following a brief return to the 'good books' in 2000, re-entered IA in May of 2001.

267. Bradman Lake's decline displayed many of the traits common to a firm under Scourfield's supervision and Mills' management. No proper credit applications or corresponding sanctions could be found on the Bank file post 2003,¹⁷⁹ despite escalating debt.

268. The CA for Bradman Lake, bearing the date of the 5th of January 2006, sent to Angus by Scourfield in January of 2007, contains reference to the December 2005 management accounts¹⁸⁰. Angus: *"it would be a stretch of credibility to expect the accounts to have been prepared, submitted to the Bank, reviewed and then commented upon in a report dated 5th January."*¹⁸¹

269. The company also became a corporate customer of Clode. Some of its Clode borrowing was routed via Sandstone and much was ultimately written off¹⁸².

270. It was also the recipient of a £2m loan from Mills' Sandstone Organisation. Sandstone in turn received a loan in the same amount from Lloyds Bank. HBOS provided a guarantee to Lloyds for its loan to Sandstone and Sandstone assigned to

¹⁷⁹ Final CA is at ex.p.84991 and the approval by Gordon Grieve is at ex.p.84988.

¹⁸⁰ Part of Appendix F of JP/9, discussed above, at ex.p.513.

¹⁸¹ Angus, st.p.588-9.

¹⁸² A £790,000 Clode loan to Sandstone, dated the 7th of December 2006, was on-lent to BL. See Davies' schedule NJD/7, at ex.p.68642. Including interest, the total write off was £802,864.

HBOS the value of its loan to Bradman Lake as security¹⁸³. Scourfield executed the guarantee to Lloyds¹⁸⁴.

271. By the time it entered administration, Bradman Lake's HBOS debt stood at £36m; greater than the entire company turnover of £30m. The Bank was forced to write off the debt in January of 2008.

272. Thus Scourfield, who at the time was overseeing a flow of HBOS money to support Bradman Lake, was also the indirect beneficiary of some of that funding. His position was hopelessly compromised. In addition, it is quite obvious that many of the trips were nothing more than 'jollies'. **LS TRAVEL TABLE**

273. In April of 2002, Scourfield travelled from Heathrow to Dusseldorf for a night (£452.35, paid on the Bradman Lake credit card). Mills was in the city at the same time and travelled back on the same flight as Scourfield. The travel consultant who booked the trip recalls being told that this was a "*company meeting*"¹⁸⁵.

274. In October of 2002, Scourfield took a nine day trip to the USA. He flew from Gatwick to Atlanta where he stayed for four days before flying on to Charlotte for a day. He then flew to a resort on the Carolina coast called Myrtle Beach for three days, a part of the trip that the travel consultant recalls was an "*add on*"¹⁸⁶. Mills and Graham Hayes were also in Charlotte at the time. Scourfield's flights cost Bradman Lake £853.87¹⁸⁷.

275. In May of 2003, Scourfield travelled to Majorca for a week. David and Alison Mills had travelled out the day before with members of their family; the Mills had a property on the island. All of these flights were paid for using a rebate that Bradman Lake had built up with the travel consultant¹⁸⁸.

¹⁸³ See Mesher Mills report at para.7.20, ex.p.75483. The arrangement is very similar to that in respect of Smollensky's detailed below.

¹⁸⁴ Scourfield's signed instructions in this regard are at ex.p.85016.

¹⁸⁵ Bamford, st.p.1212 and REB/1, ex.p.65954.

¹⁸⁶ Ibid. st.p.1212.

¹⁸⁷ REB/2, ex.p.

¹⁸⁸ Bamford, st.p.1213.

276. In October of 2003, Scourfield and Mills flew to Los Angeles and on to Las Vegas (where Hayes joined them), returning four days later. Scourfield's business class flights cost Bradman Lake £3,032.20¹⁸⁹.

277. David Mills held an account with American Express. Lynden Scourfield was provided with his own card on that account and spent liberally on it¹⁹⁰. The complete impropriety of this arrangement is perhaps so obvious as not to need stating, but Tom Angus puts it thus:

*"I have never in my professional life ever heard of a banker holding such a card. It would be completely unacceptable and I do not understand why he would have one.... The very fact that he had a card would place him in an indefensibly vulnerable position. If personal usage is on the card then the suspicion would be that there can only be one reason; that the client wants you to do something in return that may not be in keeping with your duty of care to the Bank."*¹⁹¹

278. Mills had arranged for this supplementary card for Scourfield in September of 2003¹⁹² and it remained live until December 2005. All Scourfield's transactions were billed to Mills as the primary card holder. No statement was ever issued to Scourfield and there is no evidence of Scourfield ever paying off any of the balance he accrued.

279. A schedule of Scourfield's spending on Mills' American Express account has been produced¹⁹³. The chronology of that spending has been combined with the Bradman Lake travel evidence in the following paragraphs, as the two sources frequently overlap.

280. In January of 2004, Scourfield spent £425 in Russell and Bromley and £227 on hotels in Reading.

¹⁸⁹ ex.p.65971, 76597 and 65981.

¹⁹⁰ Richards, st.p.1017-21 and DR/3, ex.p.63569-814.

¹⁹¹ Angus, st.p.528.

¹⁹² ex.p.63820.

¹⁹³ Mesher Scourfield report, Appendix 17, ex.p.75973-78. The AMEX statements are at ex.p.78611-67.

- 281.** That same month, Scourfield and Mills flew to Orlando, Florida for four days. Scourfield's business class flights cost Bradman Lake £2113.30¹⁹⁴. Whilst in the US, Scourfield continued to spend on the American Express card. He bought luggage or leather goods for £302.53, jewellery for £840.36, spent £174.08 in a Nordstrom department store, £24 on men's clothes¹⁹⁵ and £302.05 in the Radisson hotel.
- 282.** In February of 2004, Scourfield returned to Florida, staying in Miami before taking a cruise for seven nights from the 7th of February¹⁹⁶. His flights (£1,321.93) the cruise (£2,503.10) and his on-board expenses (£1,505) were all charged to Mills' American Express account.
- 283.** In April of 2004, Scourfield flew to Chicago and on to Charlotte, where Mills had also travelled, returning after three days. His business class flights (£2209.40) were charged to Bradman Lake's credit card¹⁹⁷.
- 284.** Later that month, Scourfield spent £2,723.80 with Virgin Atlantic and in June £5,880 with Silver Sea Cruises. The three nights, 6-star, all-inclusive cruise on the 'Silver Wind' from Nice to Saint Tropez and Portofino was for Lynden and Jacqueline Scourfield and David and Alison Mills. Together, they occupied the second most expensive accommodation on the ship, the two-bedroom Royal Suite. Scourfield made the booking, but paid using Mills' credit card account¹⁹⁸.
- 285.** In July and August he spent £465 in a hotel¹⁹⁹, £725 at a golf club and casino in Newbury, £190 at Le Caprice and £495.96 with EasyJet flying to Mallorca. All were charged to Mills' American Express account.

¹⁹⁴ REB/8, ex.p.65988-90.

¹⁹⁵ In Perry Ellis boutique, whose founder (according to the web site) "wasn't afraid to fly by the seat of his pants."

¹⁹⁶ The cruise had been booked through a Co-op Travelcare branch in Maesteg, Wales in January. The business had been owned by Scourfield's uncle and he still owned the property. The property was to be used as security for a loan made by Clode to Lyn Scourfield via Burwell Nominees in 2006, see Clode section, below. A copy of Scourfield's booking details is at ex.p. 63902 and of his on-board expenses (inc. meals, spa treatments and shopping) is at ex.p.63897-900.

¹⁹⁷ REB/9, ex.p.65991-2 and REB/10, ex.p.65993-8.

¹⁹⁸ ex.p.61553.

¹⁹⁹ See the Ditchling Ball section, below.

- 286.** In September of 2004, Scourfield flew to Los Angeles and on to Las Vegas, returning four days later. Mills flew on the same flights to and from Las Vegas. Bradman Lake paid £3,107 for Scourfield's business class tickets²⁰⁰.
- 287.** Whilst Stateside, Scourfield charged £553.47 to Mills' card in Las Vegas Premium Outfitters.
- 288.** In October, Scourfield spent £275 in the Holiday Inn in Birmingham. In November, he racked up charges to the card at the Westbury Hotel in Mayfair (£266.82)²⁰¹, The Vineyard at Newbury (£350) and Wilton's Oyster Bar in St. James' (£410). In December, he spent £225 at the Landmark Hotel and £542 in Louis Vuitton, all charged to Mills' account.
- 289.** In early December of 2004, Scourfield and Mills and their wives, Jacqueline and Alison, flew to Charlotte via Washington and back via Chicago for three days. They all stayed in suites at the Hampton Inn. Lynden and Jacqueline Scourfields' flights cost Bradman Lake £918.60²⁰². Scourfield spent £58.39 in a cheesecake restaurant, £201.63 on a hotel and £320.64 in Helzberg Diamonds, all on the American Express card.
- 290.** Later that month, Scourfield flew to Munich for a day. Mills, Hayes and other Bradman Lake employees also travelled. Scourfield's flights cost Bradman Lake £242.90²⁰³.
- 291.** In January of 2005, Scourfield flew first and business class to Charlotte via Orlando and back via Miami in company with Mills. Whilst in Orlando, Scourfield attended the PGA golf show with Mills and Treharne of Seoul Nassau. Scourfield's tickets for the five day trip were paid for on Mills' Bradman Lake credit card in the sum of £3,527.60²⁰⁴.

²⁰⁰ REB/11, ex.p.65999-66002 and REB/12, ex.p.66003-6.

²⁰¹ Invoice at ex.p.63906.

²⁰² REB/13, ex.p.66007-13.

²⁰³ REB/14, ex.p.66014-26.

²⁰⁴ REB/15, ex.p.66027-32.

- 292.** The pair stayed at the Ritz Carlton in Orlando (arranged via Seoul Nassau) and the Mandarin Oriental in Miami. Scourfield charged his stay at both hotels to Mills' American Express card, totalling £1,064.77. He also paid for his Charlotte hotel (£146.87) and some duty free and sports goods (£251.17) on the card.
- 293.** Christine Welsh at Bradman Lake (although using her Quayside e-mail) had e-mailed Scourfield to his HBOS e-mail address under the heading "*Trip to the United States*" and promising a limo to pick him up from home. Scourfield replied, pointedly asking, "*Can you send any further emails on this trip to my personal email as easier to access: scourfieldl@aol.com.*"²⁰⁵ **12/20/1109**
- 294.** On the 7th of February, a short time after their return, Mills e-mailed the President and CEO of Capital South Partners in Charlotte. Mills thanked him (Joseph B Alala III) for his hospitality on behalf of Lynden and himself and ended: "*A small reminder Lynden was keen that the details of the transaction were kept confidential between Bank of Scotland and Capital South.*"²⁰⁶ **35/21/3020**
- 295.** In February of 2005, Scourfield bought American Airlines tickets for £770.60 and in March spent £2,581.40 with Virgin Atlantic. He also spent £280 in the Marriott County Hall and £63 in a curry house in Hook. In April, he spent £150 in J Sheekey's, £385.10 at the Landmark hotel, £405.20 at the Hard Rock hotel in Chicago and £78 on Heathrow parking. All was charged to Mills' American Express account.
- 296.** In May 2005, Lynden and Jacqueline Scourfield travelled to Barbados for a week as part of a group to celebrate Alison Mills' 40th birthday²⁰⁷.
- 297.** Alison Mills had e-mailed Scourfield and Bancroft on the 19th of April to confirm the itinerary. She included the following: "*the main thing to remember is that we are all on holiday! You should feel relaxed...we are with all our closest and oldest friends and we are going to have a super time!*"²⁰⁸ **35/23/3022-23**

²⁰⁵ ex.p.22495.

²⁰⁶ ex.p.22503

²⁰⁷ See photographs at ex.p.167484-90.

²⁰⁸ ex.p.64561-2.

- 298.** The flights were arranged by Mills' PA at Bradman Lake, but paid for by cheques drawn on the Sandstone account. The Scourfields' upper class flights cost £2,839²⁰⁹. Whilst on the island, Scourfield spent £3,220.71 on a Cartier watch in Diamonds International in Bridgetown. This was charged to Mills' American Express account.
- 299.** Also on the trip, besides David and Alison Mills and members of their family, were Michael and Beverley Bancroft, whose upper class flights (£2,839) were also paid for by Sandstone, and Roger Hawes²¹⁰. In addition Christopher Langridge (Bradman Lake and Remnant), Craig Treharne (Seoul Nassau), Graham Hayes (Bradman Lake), Marcello Alessi (Smollensky's) and Nick Davies (Clode) were also present. **PHOTOS**
- 300.** Davies states: *"Typically, David would pay for this type of trip and bill it to the company. I do not recall paying anything, I think the understanding was that it was effectively a business trip, a business jolly that he would ultimately bill back in to the company."*²¹¹
- 301.** In September 2005, Scourfield, Mills, Hayes and other Bradman Lake figures flew on a trip to Las Vegas via San Francisco. Scourfield's Upper Class seats cost Bradman Lake £4,532.92²¹². Scourfield stayed at the Bellagio hotel from the 24th to the 28th with the other members of the party. His room and extras were paid for by Mills on Mills' American Express card²¹³. The travel consultant recalls being informed that suites were required as they would be 'entertaining' and that they were attending a trade fair on the trip²¹⁴.
- 302.** Between August and December of 2005, Scourfield charged over £1000 in hotel and restaurant bills to Mills' American Express account.

²⁰⁹ REB/16, ex.p.66033-49.

²¹⁰ It is accepted that Hawes notified Burges Salmon of the trip in advance and that the firm sanctioned his attendance and paid for some of the costs. See e-mail at ex.p. 77104-5. The firm paid for an i-pod, pink case and CD's as a birthday present for Alison Mills, see ex.p.106500.

²¹¹ Davies, st.p.1292.

²¹² REB/17, ex.p.66050-61.

²¹³ ex.p.63971-2.

²¹⁴ Bamford, st.p.1219.

- 303.** Mills picked up the tab when he, Scourfield, Niall Doran and David Crawshaw travelled to Moscow for three days in February 2006²¹⁵. The trip was arranged through Bradman Lake. Scourfield's flights came to £369.20 and his room at Le Royal Meridian cost Mills £938.10²¹⁶. Once again Scourfield asked David Mills' PA (Christine Welsh) to use his aol email address.**12/19/1108 and PHOTOS**
- 304.** In November of 2006, Scourfield flew to Bangkok for five days as part of a group to celebrate David Mills' 50th birthday²¹⁷. Also on the trip, aside from Mills, were Craig Treharne, Nick Davies, Graham Hayes and Scourfield's Bank colleague Mark Dobson, who went in place of Bancroft after he dropped out. The trip was paid for by Bradman Lake cheque for £9,975. Scourfield's flights cost £1,662.50 and Dobson's (business class) £1,950²¹⁸. **PHOTOS**
- 305.** Davies confirms that he did not pay for the trip. *"It was a very similar set of circumstances as the Barbados trip...I was very much being patted on the head as an employee...as a sort of bonus-type approach."*²¹⁹
- 306.** In total, Bradman Lake incurred costs of £22,643.64 relating to Scourfield's trips. During 2004 and 2005, Mills paid for £31,888 of Scourfield's spending via his American Express account. When one adds the Sandstone-funded Barbados trip, Scourfield and his wife can be demonstrated to have received £57,370.64 in identifiable corrupt gifts in this way.
- 307.** In his police interviews, Mills accepted that Scourfield had a card on his AMEX account, agreed that it wasn't appropriate and thought that the Bank wouldn't be, *"absolutely chuffed to bits"* about it²²⁰. He said that the spending was business-related. He said that he thought Scourfield had paid him back for the Cartier watch

²¹⁵ See photographs at ex.p.167493-4.

²¹⁶ REB/18, ex.p.66062-67.

²¹⁷ See photographs at ex.p.167496-500.

²¹⁸ REB/19, ex.p.66068-74.

²¹⁹ Davies, st.p.1292.

²²⁰ Mills interview, tr.p.333.

bought in Barbados and that Scourfield's personal card hadn't worked so he had used his card linked to Mills' account.

The Ditchling Ball

308. Gillian Blackburn²²¹ organised an annual charity ball in Ditchling, West Sussex.

309. In 2004, Michael Bancroft took a table for ten²²². He paid £550 for the table and £132 for pre-dinner drinks using a cheque drawn on the Frank Theake and Roskilly ('FTR') account and the FTR credit card respectively²²³. As well as Michael and Beverley Bancroft, the group included David and Alison Mills, Lynden and Jacqueline Scourfield and Steve Wiltshire, the financial controller of Bradman Lake, and his wife.

310. The couples spent the night at a nearby hotel. Scourfield paid for his room and that of the Wiltshires (a total of £465) using his American Express card charged to Mills' account²²⁴.

311. In 2005, Blackburn told Mills that she would not under any circumstances allow Bancroft to attend the ball, due to her concerns over his conduct and activities at MSG²²⁵. The table on this occasion was booked by Alison Mills in the name of Bradman Lake and was paid for by Quayside cheques²²⁶. Lynden and Jacqueline Scourfield attended.

²²¹ Director of MSG, part of the Theros Group, see Theros section below.

²²² ex.p.61536.

²²³ Wakerell, st.p.887 and ex.p.61545 and 61543.

²²⁴ ex.p.63865. The hotel was the five-star South Lodge in Lower Beeding, at which Bancroft was to stay when working for Cotton Bottoms around the same time, see below.

²²⁵ Blackburn, st.p.777.

²²⁶ ex.p.61532 and 61548.

Cash in envelopes and sexual entertainment

- 312.** By no means were all of the corrupt rewards given to Scourfield by Mills routed through Zudiki and Scourfield didn't confine his enjoyment of them to home improvements and living the high life at home and abroad.
- 313.** Terry Holligan was recruited by Michael Bancroft to work for Quayside in Magenta, part of the Theros group.²²⁷ Tony Cartwright explained to Holligan that on Fridays, Bancroft normally delivered an envelope to Scourfield at the Portman Square flat that Theros rented. Holligan was asked by Cartwright to make the delivery on a Friday in August of 2005, as Bancroft was away. Mills had apparently authorised this.
- 314.** Cartwright told Holligan that if Scourfield was not at the flat, he should leave the envelope in the 'blue drawer', which referred to a drawer in the kitchen where Bancroft kept his Viagra.
- 315.** Marcello Alessi (Quayside, Head of Clubs & Bars²²⁸) called at the Theros / QCS offices at Gloucester Place and counted out large quantities of cash in £10 and £20 notes from his briefcase. He placed the notes, estimated to be between £3-4,000, in an envelope which he gave to Holligan.
- 316.** Holligan got no answer at the flat and so let himself in. As he made his way to the kitchen area, Scourfield, wearing only a towel, appeared from the bedroom and said words to the effect of, '*Hi Terry, you got some stuff for me?*' Holligan said that he would leave it in the drawer as requested. As Holligan was talking, a girl in her twenties came out of the bedroom, said 'Hi' and made her way to the bathroom.
- 317.** Holligan later asked Cartwright what the money was for. Cartwright explained it was '*funny money*' for Scourfield to pay for girls.

²²⁷ See the Theros section, below. For Holligan's account of what follows, see Holligan, st.p.855-6.

²²⁸ Website entry: xp167521

- 318.** Holligan delivered the envelope on the following two Fridays. On the second occasion, the flat was unoccupied and he left the envelope in the kitchen drawer. On the third occasion, the door was opened by Scourfield who took the envelope from him. In the hallway, Holligan could see the same girl as he had seen on his first visit, together with a woman in her thirties.
- 319.** On his return, Bancroft discovered that Holligan had been delivering the money and told him not to do so again as it was his responsibility.
- 320.** Scourfield, however, was not the only defendant with a predilection for commercially available female company.
- 321.** Holligan was invited to attend a launch party for Remnant Media, another Scourfield HBOS connection in which Mills and Quayside were involved. When he arrived, he discovered that Remnant was in the porn business and that many of the models were present. So too were Mills, Scourfield, Bancroft and Cartwright.
- 322.** Bancroft asked Holligan if he was planning to stay at the Portman Square flat that night. Holligan said that he was, unless Bancroft didn't want him to. Bancroft indicated that he was going to take two of the models back to the flat, but told Holligan that Quayside had a room booked at the Hyatt Churchill hotel on Portman Square. Mills and Scourfield left the party with female company.
- 323.** Holligan stayed the night at the Hyatt. When he signed for the room, he was shocked to see that it had cost £620. Bancroft spent £17,562.92 at the hotel between July 2004 and May 2007, all charged to his FTR credit card²²⁹.
- 324.** Simon Robinson was the founder of Remnant Media. In 2005, Bancroft told him that he, Mills, Scourfield and Roger Hawes were having a party at the Hyatt Churchill Hotel on Portman Square. Bancroft asked Robinson to arrange four girls for the party and made it clear that this was a request to be complied with.

²²⁹ ex.p.84309.

- 325.** Robinson had no contacts of that sort, but found a girl called 'The Amazon'²³⁰ on the internet and agreed a fee of £500 for four girls. They were to meet Bancroft et al at a nightclub called Attica. Attica was part of the Mezzanine Group, which was a HBOS high risk customer, managed by Scourfield with Mills involvement²³¹.
- 326.** Robinson withdrew £2,000 in cash from the bank and had it couriered to the girl's address in Essex.
- 327.** A few days later, Bancroft told Robinson that the girls were very attractive, wore short white dresses and the group had enjoyed themselves at Attica. However, he said that he was very disappointed that when the group arrived back at the hotel expecting to have sex, the girls demanded more money.
- 328.** On a later occasion, Bancroft told Robinson that Scourfield would be in London for a few days, that he (Scourfield) had an unhappy marriage and that he would want a woman to have sex with whilst in the capital. Again, Robinson felt that this was a demand and not a request from Bancroft. Bancroft made it clear that he expected Robinson to pay.
- 329.** Karen Denman, editor of Fantasy Magazine (part of Remnant), recalls Robinson telling her that he wanted to book girls for Bancroft and other men (some from the Bank of Scotland) and asking her whether she had any numbers for girls. It was clear that he was looking for prostitutes. Denman contacted a girl called 'Vicky Holloway'²³², who worked at Fantasy.
- 330.** Holloway remembers Denman asking whether she could arrange some girls for Robinson's "*posh twat banker friends*"²³³. Holloway believed the girls were wanted for sex, but the money up-front would be for dancing and sex would be

²³⁰ Apparently advertised as a "6ft tall blond lap-dancer available for private parties".

²³¹ See Smollensky's section, below.

²³² This is a pseudonym her witness statement having been given in her real name; the prosecution will apply for all such witnesses to be referred to by their pseudonyms and for an order that their real names are not to be used or published.

²³³ st.p.937.

extra. Denman provided Holloway with a number for the client who was called Michael Bancroft.

331. Holloway rang the number, spoke to a receptionist and then to Bancroft. She told him the price was £500 per girl and agreed dancing at that stage, not sex. Forensic examination of Holloway's mobile 'phone from that time shows three numbers stored in the memory against the contact 'Michael Bancroft'²³⁴. **13/5/1135**

332. Denman was aware that Vicky Holloway had arranged several girls for the night. She believes that Holloway was paid several thousand pounds via a Remnant or Park Green²³⁵ cheque. She recalls giving Holloway the cheque and thinking "*this isn't right because at the time bills weren't being paid.*"²³⁶

333. Bancroft called Robinson a couple of days later and said he was happy with the way things had gone. He laughed about the fact that one of the girls had videoed part of the proceedings on her 'phone. He said that the girl he had been with must have enjoyed it because she went red. He took great delight in telling Robinson that Scourfield suffered from premature ejaculation, liked to undress girls and liked girls to wear suspenders and mini-dresses.

334. Denman recalls Robinson telling her that the girls had been booked and used as expected. She believes he told her that Bancroft and the others had had sex with them. Vicky Holloway also confirmed to Denman that the night had taken place and said that one of the girls had videoed the session. Holloway added that the "*bank man*" (Scourfield) was particularly rude to the girls and with what he was asking them to do.

335. The evidence from the TVX girls suggests that there were in fact two separate occasions when girls were booked for Bancroft, Scourfield and others in this way.

²³⁴ MM/1, ex.p.167465-79.

²³⁵ Another Robinson company.

²³⁶ Denman, st.p.923.

- 336.** On the first occasion, ‘FR’ recalls that she, ‘Amber’ and ‘Starr’ met a man outside the Churchill Hotel on Portman Square and walked to a flat nearby. FR’s diary entry for the 27th of October 2005 reads: *“11pm Churchill Hotel, Portman Square W1. Drink G/G/G show songs, sex strapon toys stockings classy.”*²³⁷ **13/6/1136** There were two or three other men at the flat, all similar age and well dressed. FR recalls one of the men was called Michael Bancroft. Neither woman recalls sex on that occasion, but they performed a show whilst the men watched.
- 337.** On the second occasion, ‘FR’ and ‘Amber’ were joined by ‘Susie Best’. FR’s diary entry puts the date as the 14th of December 2005 and reads: *“met guys, me, Amber and Suzie. Chinese meal. Then drinks at flat and quick shag. Easy £1500.”*²³⁸ **13/7/1138**
- 338.** Best remembers meeting three men at a Chinese restaurant near Great Portland Street. This corresponds to a December 2005 diary entry made by Vicky Holloway: *“Royal China Restaurant, Baker Street in the name of Michael Bancroft.”*²³⁹ **12/1/1129** Analysis of Bancroft’s FTR business credit card demonstrates that he visited the Royal China sixteen times between November 2004 and April 2007²⁴⁰. Best and Amber both recall that the meal involved dry ice and Amber remembers joking with Best afterwards about that and the fact that Best couldn’t use chopsticks.
- 339.** The group went to a nearby flat, where various sex acts took place. Best describes one of the men as being a *“Danny De-Vito”* look-alike, short and bald (Scourfield²⁴¹) who ejaculated when given oral sex. Young describes him as *“a bit edgy”*.
- 340.** Rampton believes there were four men on this occasion, the same three as on the first occasion (including Michael Bancroft) and a new man.

²³⁷ ex.p.62761-2.

²³⁸ ex.p.62764.

²³⁹ ex.p.62751.

²⁴⁰ At a cost to FTR of £1,858.96, ex.p.84308.

²⁴¹ See photograph at ex.p.116845 for comparison purposes.

- 341.** Bancroft later called Robinson and said that Scourfield wanted to meet 'Suzie' again. Robinson told Bancroft to book it himself. Best remembers being 'phoned in around May 2006 by the 'Danny DeVito look-alike'. She agreed to meet him at a Moroccan restaurant and then went to the Soho Hotel with him in her car.
- 342.** Robinson recalls being told by Bancroft that Scourfield had indeed met Susie again, but felt that she was too expensive.
- 343.** In a prepared statement submitted during his police interviews, Mills said that he had attended a "*dinner party*" at the Portman Square flat with Scourfield and Bancroft. He said that there was a show put on involving lap dancers. He did not know who organised it and there were no sexual encounters which he was aware of.²⁴²
- 344.** Bancroft declined to answer any questions on the topic during his police interviews, including why his telephone numbers would be stored in Holloway's 'phone²⁴³.
- 345.** It now appears that the evidence of the women in question is accepted as being true and accurate as none of the defendants require any of them to attend for cross examination; accordingly their evidence will be read by agreement.

²⁴² Mills interview, tr.p.384.

²⁴³ Bancroft interview, tr.p.540.

Smollensky's: the Svenska Handelsbanken loans

- 346.** Mezzanine Group plc operated a number of restaurants, nightclubs and bars, predominantly in London. Its core business was a well-known chain of 'Smollensky's' restaurants.
- 347.** Mezzanine had been a customer of the BoS Uxbridge branch since at least 1999, but in mid-2001 the account was transferred to the supervision of the Bank's High Risk office in Reading. The company debt at that point was circa £7.8 million, supported by overdraft and loan facilities provided by the Bank. Lynden Scourfield became responsible for the account.
- 348.** Scourfield sent an internal memo to the then Managing Director of Credit Risk at the Bank, Gordon Grieve, dated the 10th of June 2001²⁴⁴ which recommended continuing to support Mezzanine up to circa £10.5 million.
- 349.** Grieve approved Scourfield's memorandum,
- 350.** Scourfield confirmed the new arrangements of £10.5 million in an e-mail of the 17th of June 2001²⁴⁵ and a facility letter dated the 18th of June 2001²⁴⁶.
- 351.** In late 2001, Scourfield commissioned the accountants Smith and Williamson to prepare an independent business review (IBR) on Mezzanine. Smith and Williamson wrote to Scourfield on the 7th of January 2002²⁴⁷ recommending that the Bank should not increase its exposure to the Mezzanine group and that proceeds from the disposal of capital assets be applied to achieve permanent reduction of Bank debt and not used to fund on-going trading or development.

²⁴⁴ ex.p.163877.

²⁴⁵ ex.p.163883.

²⁴⁶ ex.p.163887, signed by Scourfield for the Bank and Sutherland and Georgalides for Mezzanine.

²⁴⁷ ex.p.163948.

352. David Mills, at Scourfield’s insistence, became a non-executive director of the Mezzanine group on the 27th of February 2002²⁴⁸, although there is no formal appointment documentation within the Bank’s files setting out his role and responsibilities.

353. Mills attended a Mezzanine board meeting on the 12th of March 2002, along with Scourfield, and his appointment was confirmed retrospectively by a letter dated the 2nd of August 2002 from Marios Georgiliades to David Mills at Richard Paffard Consultancy²⁴⁹. The letter stated that Mills’ appointment had been effective from the 1st of February 2002 and that he was to be paid £2,000 per month plus expenses. Additional work would be charged on an ad hoc basis.

Svenska Handelsbanken loans via Knightingale Investments

354. During 2005, by which time the Bank’s level of support to Smollensky’s was circa £25 million, additional funding was provided to Smollensky’s Balloon by way of two loans from Svenska Handelsbanken (‘Svenska’) routed via Knightingale Investments. David and Alison Mills were the directors and shareholders of Knightingale and Knightingale was an existing customer of Svenska.

355. The purpose of the loans was seemingly to allow Smollensky’s to continue to expand its business²⁵⁰.

356. The arrangement was complex. In April, Svenska lent £500,000 to Knightingale for a three year term. Knightingale then loaned the same amount to Smollensky’s Balloon. The Bank then guaranteed Knightingale’s obligations to Svenska, Scourfield signing the guarantee for the Bank²⁵¹. **34/1/2881-86**

²⁴⁸ Companies House form at ex.p. 164018. Mills listed Bradman Lake, Quayside, Keyside and Clode amongst his other directorships.

²⁴⁹ ex.p.164021.

²⁵⁰ Mlinar, st.p.1356-7.

²⁵¹ ex.p.9403.

- 357.** Proposed counter-indemnities from Knightingale and Smollensky's Balloon to cover the Bank's potential exposure from its guarantee to Knightingale were deleted from the agreement²⁵².**34/3/2892-97**
- 358.** The board of Knightingale issued a secretary's certificate, signed by Alison Mills, which noted that the directors had resolved that the facility was "*for the commercial benefit*" of Knightingale²⁵³. The board of Smollensky's Balloon issued an almost identical certificate²⁵⁴.**34/6&7/2902&03**
- 359.** In November, the arrangement was similar. Svenska lent £1.925 million to Knightingale and Knightingale then onward lent the same amount to Smollensky's Balloon. As in April, the Bank provided a guarantee to Svenska, covering Knightingale's obligations. As before, the guarantee was signed by Scourfield for the Bank²⁵⁵.**34/10/2905&06**
- 360.** On this occasion, the Bank did receive counter-indemnities from both Knightingale and Smollensky's Balloon, in respect of the Bank's liability to Svenska. The indemnities covered both the April and November loans²⁵⁶. Knightingale's document was signed by David Mills and by his son, Richard David Paffard Mills.**34/11/2911-13**
- 361.** Paul Mlinar of Svenska dealt with Mills' loan applications: "*I was aware that the Bank of Scotland had a high exposure to Smollensky's, which was effectively unsecured. It was apparent that the Bank of Scotland were trusting greatly in David Mills' acumen to turn around the business and recreate the success of the restaurant chain prior to the Mezzanine Group failure.*"²⁵⁷

²⁵² ex.p.9523.

²⁵³ ex.p.9393.

²⁵⁴ ex.p.9395.

²⁵⁵ ex.p.9596.

²⁵⁶ ex.p.9603 and 9607.

²⁵⁷ Mlinar, st.p.1356.

- 362.** Mills had provided two contacts for Mlinar to speak to, to provide “comfort” as to his credentials²⁵⁸.**34/14/2918** They were Jonathan Cohen and Roger Hawes.
- 363.** These arrangements raise this fundamental question: why would Scourfield involve HBOS in guaranteeing loans made by another Bank (Svenska) via a third party company (Knightingale) to one of his HBOS high-risk customers (Smollensky’s) which was in already in receipt of large amounts (£25 million) of HBOS funding?
- 364.** An e-mail of March 2005 from Dawn Mack at Smollensky’s Balloon to Mills, copied to Scourfield, which lists a “*5K Bank of Scotland fee for the Knightingale loan guarantee*”, suggests that the Bank may have been rewarded for its efforts²⁵⁹.**34/15/2919** But this is a small fee for such a large risk, and, in any event, no debit for any fee appears on the Smollensky’s Balloon bank statements for the period.
- 365.** Further, a note from the Bank’s solicitor records a telephone conversation with Scourfield and Mills in relation to the guarantee, “*Lynden said that the Bank did not want to take any commission / arrangement fee for the Bank guarantee facility.*”²⁶⁰**34/16/2920**
- 366.** The Mack e-mail also refers to a “*50K deposit for Knightingale Investments Ltd*”²⁶¹. The same solicitor’s note referred to above states that “*in relation to the loan agreement between Smollensky’s Balloon...and Knightingale...the Bank is happy with the arrangement fee of £57,750 and the interest rate of 6%.*” On the 28th of April 2005, Smollensky’s Balloon made an unexplained payment to Knightingale of £16,880.55. It appears that Mills, playing the role of banker, had gained from the arrangement.

²⁵⁸ ex.p.69029.

²⁵⁹ ex.p.9652.

²⁶⁰ ex.p.9549.

²⁶¹ ex.p.9652.

367. By the time of the guarantees, there was already an asset cover shortfall of over £5.5 million; in other words, the Bank had already lent more to Smollensky's Balloon than the apparent value of the business and assets of the company, resulting in an inevitable shortfall should there be a default. Also, it appears that Smollensky's was not making any contribution to the funding of the new premises and therefore there was a 100% loan to value. In light of all these factors, Scott concludes: "*I cannot explain why BoS entered into an arrangement to guarantee lending in these circumstances.*"²⁶²

368. The very fact that Svenska had concerns over whether it would be repaid and therefore required guarantees was a clear warning to Scourfield of the inherent risks he was taking with Bank money.²⁶³ The scheme was clearly inappropriate and was designed to disguise the additional funding going to Smollensky's, whilst further and unjustly enriching Mills.

369. Knightingale received repayments from Smollensky's and made repayments to Svenska Handelsbanken in return²⁶⁴. Knightingale earned a margin of approximately £200,000 on the loans²⁶⁵.

370. David Mills wrote in an e-mail dated the 2nd of November 2005 that "*Knightingale is purely acting as a 'middle person' on the agreement and passing money over*".²⁶⁶

371. Scott notes that although the Bank guarantees were facilities to Knightingale, the exposure to Knightingale should have been aggregated with the Bank's existing exposure to Smollensky's Balloon so that they were treated as a single risk.

²⁶² Scott, st.p.90.

²⁶³ ex.p.9549.

²⁶⁴ See Appendix 4 to Mesher's Smollensky's report for a schedule of payments and receipts between SBL and Knightingale, ex.p.142318.

²⁶⁵ Mesher, Smollensky's report, ex.p.142285.

²⁶⁶ ex.p.143404.

- 372.** In addition, Smollensky's was ultimately owned by Mills through Sandstone. Mills was also the owner of Knightingale and one of the Smollensky's Balloon directors was a consultant from Mills' company Quayside. The conflicts are obvious.
- 373.** Mills e-mailed Svenska on the 17th of September 2007, informing them that Smollensky's had been sold and that the outstanding loans would need to be settled by HBOS²⁶⁷. **34/20/2927** Svenska responded that HBOS had advised that a demand must be made under the guarantee and for this to happen the loan must be in default²⁶⁸.
- 374.** Mills e-mailed Svenska on the 3rd of October 2007, stating that HBOS were the "*beneficial owners of Smollensky's Group*" and repeating that the loans should be repaid under the Bank guarantee²⁶⁹. **34/22/2929**
- 375.** Svenska made demands to HBOS for payment in respect of the two guarantees Scourfield had provided. HBOS received legal advice that the Bank was obliged to make the payments and accordingly paid Svenska £792,646.71²⁷⁰ on the 30th of October²⁷¹.
- 376.** A total of approximately £28.6 million was written off by the Bank, including the guarantees to Svenska²⁷².

²⁶⁷ ex.p.69034.

²⁶⁸ ex.p.69036.

²⁶⁹ ex.p.69037.

²⁷⁰ ex.p.9778.

²⁷¹ Scott, s.p.3175,

²⁷² Mesher Smollensky's report, ex.p.142278. Angus puts the figure at £28.7 million, st.p.598.

Petards: theft of an exit fee

- 377.** Petards Group plc²⁷³ ('Petards') banked with HBOS and had been moved under the supervision of the Bank's High Risk division in 2002.
- 378.** The group's non-executive chairman, Timothy Wightman, recalls a meeting with Scourfield in 2003 at which Scourfield insisted that Petards appoint Mills as a non-executive director on the board.²⁷⁴
- 379.** On the 22nd of January 2004, Mills was duly appointed as a non-executive director for an initial three year term²⁷⁵. So far as Wightman is concerned Mills was appointed as an individual and there was never to be any involvement by Mills' company Quayside Corporate Services.
- 380.** Mills' remuneration of £1,500 per month (£18,000 per annum) was invoiced monthly by Richard Paffard Consultancy and Petards paid Mills directly to his Richard Paffard Consultancy account. He received circa £88,500 from Petards from 2004 until early 2007²⁷⁶.
- 381.** Petards were clients of a specialist merchant bank called Interregnum²⁷⁷. The chairman of Interregnum, Kenneth Olisa, recalls Mills', "*ability to extract significant sums from the local HBOS manager, Lynden Scourfield...*" Olisa adds, "*what made Lynden's kindness all the more remarkable was that...he was prepared to act on the basis of a phone call from David*"²⁷⁸ who could "*conjure up significant unsecured sums.*"²⁷⁹

²⁷³ Formerly Screen plc, until the 10th of February 2005. Petards still trades.

²⁷⁴ Wightman, st.p.1370.

²⁷⁵ Mills remained a director of Petards for over six years, retiring by rotation at the 2010 AGM.

²⁷⁶ See ex.p.84958.

²⁷⁷ Interregnum changed its name to Parkmead and acquired Quayside from Mills in 2006 for around £8m, despite due diligence suggesting that the valuation of Quayside was too high and pointing to the lack of any formal contractual agreements with HBOS. Realising its mistake, Parkmead sold Quayside back to Mills barely 20 months later at a 67% discount.

²⁷⁸ Olisa, st.p.1086.

²⁷⁹ Ibid.

- 382.** Petards was looking to raise new equity and to re-structure the company's debt. To this end, Wightman met with Scourfield several times.
- 383.** The loan facility letter, dated the 24th of January 2005, **7/2/??²⁸⁰** sets out the terms on which the loan was made. It included the following clause, under the heading 'Fees and Expenses': "*The borrower will pay to BoS...an exit fee of £250,000 (the exit fee) on the final repayment or the prepayment of the Term Loan...*"²⁸¹ The possibility of the exit fee being paid earlier than at the completion of the term loan was never discussed.
- 384.** The facility letter was approved by the Petards' board and signed on the 24th of January²⁸².
- 385.** Scourfield, meanwhile, had concluded a private arrangement with Mills over the exit fee. The day after the facility letter had been signed Mills sent an e-mail to Scourfield²⁸³, which stated: "*Following on from the EGM today, it now looks like everything will go ahead for the refinancing of the Group. You did ask me to drop you a line to remind you that Quayside is happy to receive your suggestions of how we can share in the back end exit payment negotiated for the work undertaken on the company. Please let me know what you think will be fair at your convenience.*"²⁸⁴ **7/7/825**
- 386.** On the 7th of March, Mills again e-mailed Scourfield under the heading 'Petards': "*Lynden, any chance of a note of confirmation that HBOS and Quayside are able to split the final exit fee for the above Group when it falls due?*"²⁸⁵ **7/8/826**
- 387.** None of the documentation generated as part of the re-financing process made any mention of Quayside, still less that it might receive any part of the exit fee.

²⁸⁰ Xp66619-66645 (the schedules to the letter) have been retained in error and 66605-66617 (the letter) removed in error; this will be corrected.

²⁸¹ ex.p.66615.

²⁸² ex.p.66605.

²⁸³ See note 123 above.

²⁸⁴ KH/16, ex.p.66660.

²⁸⁵ KH/16, ex.p.66662.

If Quayside were to have benefited from any part of the fee, this should have been clearly stated on the facility letter and credit application²⁸⁶. Further, Wightman and the Petards' board had agreed to the terms of the loan on the basis that the exit fee was payable to HBOS in consideration for the provision of funding by the Bank.

388. As Wightman states: *"Although David Mills took a role in the arrangement of the Term Loan, there was never any suggestion that he was so instrumental in the arrangements that he or his company would be eligible for additional fees as a result of any work he did or advised on in respect of the loan."*²⁸⁷ Mills, of course, was in receipt of a monthly fee of £10K for his input as a Petards director. **7/13/836**

389. An invoice has been located, dated the 5th of May 2005, addressed to Emma Marriott at HBOS from Quayside, for *"Work undertaken during 2004-2005 for Screen Plc / Petards Group. To help achieve a successful conclusion to major repayment of bank debt. One off success fee as agreed."*²⁸⁸ The sum demanded was £117,500; a round £100,000 plus VAT. **7/17/860**

390. On the 25th of July 2005, Alison Mills e-mailed Scourfield a document which purported to list amounts due to Quayside from HBOS, including £117,500 owed in respect of Petards since the 1st of May 2005.²⁸⁹ **7/9/827&8** Alison Mills sent similar documents to Scourfield on the 7th of September and the 3rd of October 2005.²⁹⁰ **7/10&11/829-**

391. Bob Wood, who was the HBOS 'good book' relationship manager for Petards, recalls being told by Lynden Scourfield that part of the fee, £100,000, was to be paid to Quayside. He referred this to his manager, George Niven, for authorisation²⁹¹. Niven remembers Scourfield coming to see him, telling him that Petards had re-financed and that Quayside Corporate Services were due £100,000 of the fee in respect of their involvement in arranging the facilities.

²⁸⁶ Harrington, st.p.3134.

²⁸⁷ Wightman, st.p.1374.

²⁸⁸ ex.p.123618.

²⁸⁹ ex.p.66675.

²⁹⁰ ex.p.66681 and 66687.

²⁹¹ Wood, st.p.1375.

- 392.** Niven thought that both the total fee and the proportion due to Quayside were unusually high, but at that stage had no reason to doubt Scourfield's word. Both Wood and Niven had been deliberately misled by Scourfield. Niven agreed to pay the amount to Quayside by ten monthly instalments.
- 393.** Scourfield responded to Alison Mills on the 5th of October, stating: "*David has agreed to refund the £100k due in respect of Petards and invoice moving forward over 12 month period commencing Sept 05.*" He asked her to send the monthly invoices to Bob Wood at the Bank²⁹². **7/12/833**
- 394.** Ten monthly invoices were indeed submitted by Quayside to HBOS, each for £11,750 including VAT, presumably to replace the earlier single invoice. Each purported to be for, "*Part payment for work undertaken during 2004-2005 for Screen Plc / Petards Group - to help achieve a successful conclusion to major repayment of bank debt.*" **7/16/840-859**
- 395.** The £117,500 of receipts can be identified on the Quayside bank account and matched to the payments from HBOS. The Bank has not been able to find any document that explains what work Quayside had done to be due this money. Nor can the Bank explain how HBOS had paid Quayside part of a fee due from Petards to HBOS before HBOS itself had received any part of the fee from Petards. As noted above, the exit fee was only payable once the term loan had been re-paid. The clue is in the name.

²⁹² ex.p.66690.

Mark Dobson, David Mills and Eyesaglow: theft of an exit fee

396. Eyesaglow Ltd, which ran a nightclub in Watford, went into administration in 2006. The company banked with HBOS and the Bank appointed two employees of Tenon as administrators. Their role was to run the business as a going concern and attempt to find a buyer. Andrew Pear, one of the two administrators, made contact with Mark Dobson, who was managing the Eyesaglow account for the Bank, and who Pear knew from having been previously seconded from Tenon to HBOS in Reading.

397. In Pear's experience administrators for licenced premises would almost always engage the services of a specialist management company to manage premises on a day-to-day basis. However, in this case HBOS, in the form of Dobson, insisted on the use of Mills' company Quayside²⁹³.

398. A record of a meeting between Dobson and Pear in February records, *"Managing agents: Quayside (Marcello) - BOS choice."*²⁹⁴ In a letter dated the 1st of March 2006 from Mills to Dobson, Mills discussed Quayside's appointment to Eyesaglow and cited fees to Tenon of *"no more than £2,000 per week"*. However, Mills also wrote: *"If...the club is successfully sold, with the Bank receiving full payment of its money, then I would propose a success fee of £100k-£150k plus VAT."*²⁹⁵ **8/9/972**

399. Pear knew nothing of this suggested 'success fee'. He drew up a letter of engagement for Quayside involvement, dated the 16th of March 2006 and addressed to David Mills, which Mills signed on the 31st of March²⁹⁶. **8/11/977** At that point he also agreed Quayside fees in the region of £2,000 per week²⁹⁷ for which Quayside would periodically invoice.

²⁹³ Pear, st.p.647.

²⁹⁴ ex.p.167055.

²⁹⁵ ex.p.86769.

²⁹⁶ ex.p.60449.

²⁹⁷ Pear, st.p.647.

400. The administrators sold Eyesaglow on the 10th of October 2006 for £2.6 million. It was their responsibility to ensure that the proceeds of the sale were correctly apportioned as between the various creditors.

401. To that end, Pear e-mailed Dobson on the 24th of October: *“I look forward to hearing from you with a settlement figure in respect of the Bank’s capital and interest in order that I may arrange immediate payment to you. I also look forward to discussing the level of your administration fee at a convenient moment.”* Dobson responded on the 27th of October: *“Settlement of bank balance £885,985.59 - £150,000 Total £1,035,985.39”*.²⁹⁸ **8/16/993**

402. An administration fee represents a fee charged by the Bank to cover administration work undertaken by the Bank. Dobson was indicating that in this case the Bank sought £150,000. Pear notes that, *“BoS had calculated its exit fee of £150k to cover its fees and expenses for dealing with the administration process of Eyesaglow.”*²⁹⁹

403. On the 30th of October, a total of £1,035,985.59 was transferred from the administrators’ account to clear all outstanding amounts due to HBOS, including the term loan. Pear’s letter of reconciliation to the Bank stated that the transfers *“should clear all outstanding amounts due to Bank of Scotland and leave a credit balance of £150,000...which will be taken by the High Risk Department”*³⁰⁰. **8/14/985** The fee was accounted for in the administrators’ January 2007 report, sent to Dobson by Pear, as *“consultancy and closure charges”*³⁰¹.

404. Quayside’s fees of £70,012.53 were also settled by the administrator. Pear is clear that this was in full and final settlement of the fees he had agreed with Quayside. *“The QCS entitlement was purely based upon weekly fees, there was never any agreement for a lump sum on completion and they would not have been entitled*

²⁹⁸ ex.p.66314.

²⁹⁹ Pear, st.p.648.

³⁰⁰ ex.p.60454.

³⁰¹ ex.p.66284.

to any form of success fee, as they were not in any way involved in the negotiation or sale of the club.”³⁰²

405. Later, Andrew Pear noticed from a review of bank statements that the administration fee had been calculated as £152,750 and had been transferred from the Eyesaglow Corporate Current Account to an account in the name ‘*Mr D Mills T/A Richard Paffard Consultancy*’³⁰³. He thought this odd, as he had never heard of Richard Paffard and knew that they had not been involved in the administration of Eyesaglow.

406. Pear contacted the Bank, made them aware of his concerns and sought clarification that the payment had been authorised. HBOS provided him with an authorisation slip for the transfer to Richard Paffard, signed by Mark Dobson. It bore an invoice number ‘RP00144’.

407. A copy invoice was recovered from Mills’ home, addressed to Dobson, dated the 4th of December 2006 and numbered ‘RP00144’, for “*Final work undertaken on Area Nightclub including agreed success fee*” in the sum of £130,000 plus VAT, making £152,750³⁰⁴. **8/9/973**

408. On the 11th of December 2006, Mills had e-mailed Dobson the account number and sort code for his business, Richard Paffard Consultancy³⁰⁵. The money was received by Mills’ Richard Paffard Consultancy account on the 12th of December. On the 15th of December, the whole amount (plus a £25 CHAPS fee) was transferred to an Isle of Man RBS account in the name ‘Justus Limited’³⁰⁶. Mills made the transfer request himself.³⁰⁷ **8/6/959** Justus was a Mills-owned Isle of Man company whose stated business was yacht management.

³⁰² Pear st.p.648.

³⁰³ The respective account statements are at KH/9 (Eyesaglow) and KH/18 (Richard Paffard).

³⁰⁴ ex.p.86770.

³⁰⁵ ex.p.66441.

³⁰⁶ Transfer request signed by Mills, ex.p.66445.

³⁰⁷ ex.p.20709.

- 409.** HBOS has not been able to ascertain why the £152,750 paid by the administrator to the Bank to settle the Bank's administration fee was transferred to Mills at Richard Paffard Consultancy. The fee should have been directed into an HBOS internal fees account for the benefit of the Bank (to add income to the Bank's profit and loss account) and not maintained in the Eyesaglow Corporate Current Account for well over a month before being transferred to an unknown third party.³⁰⁸
- 410.** In July 2007, the administration of Eyesaglow ended and the company was placed into voluntary liquidation. The liquidator at KPMG wrote to Andrew Pear at Tenon, querying the basis on which the Bank's administration fee had been calculated. On the 5th of December 2007, Pear forwarded to Dobson an extract of the liquidator's letter, stating: *"I recall that the Bank's fee was discussed with you...and based upon these discussions, I was entirely comfortable that the fee reflected the considerable work required on the part of the bank during the course of the administration..."*³⁰⁹ **8/3/945**
- 411.** On the 9th of April 2008, the liquidator wrote direct to Dobson, noting that the £152,750 fee had been paid to the Bank in relation to costs the Bank had incurred with the settlement and discharge of its loan. The liquidator noted, however, that there was no explanation for how that figure had been calculated and asked Dobson for an explanation³¹⁰. **8/2/929**
- 412.** The liquidator had to write to Dobson again on the 15th of May, enclosing his earlier letter, and asking for a response within 14 days³¹¹. Dobson's repeated failure (see below) to engage with the liquidator's repeated requests for clarification is a clear sign that he did not welcome the liquidator's scrutiny of the fee.

³⁰⁸ Harrington, st.p.3127.

³⁰⁹ ex.p.66359.

³¹⁰ ex.p.66318.

³¹¹ ex.p.66319.

- 413.** Dobson discussed the matter with Andrew Pear. On the 20th of May, Pear drafted a response to the liquidator which he sent to the Bank's solicitors, copying Dobson in, which began, *"Following my discussions with Mark Dobson yesterday afternoon, we have agreed that the Bank's response should be short and to the point..."* The draft then set out the calculation of the Bank's fee, based on the work performed monitoring the recovery process, the delays occasioned by the problematic disposal process and a risk element to reflect the impaired nature of the security. It also sought to remind the liquidator that ...*"the Bank is entitled to recover its proper costs and risk fees in circumstances such as this..."*³¹² **8/2/931**
- 414.** Clearly not satisfied,³¹³ the liquidator wrote to Dobson again on the 23rd of May³¹⁴. Dobson failed to respond and the liquidator wrote again on the 22nd of August, looking forward to a *"prompt reply"*³¹⁵.
- 415.** On the 9th of December, the liquidator e-mailed Dobson: ...*"the key issue which the major creditor – HMRC- has re-raised in recent discussions is in relation to the exit fee taken by the Bank...I should be grateful if you would address this matter as a matter of some urgency..."*³¹⁶ **8/2/943-937** Dobson eventually replied on the 19th of December, but only to say that he was away until the 5th of January.
- 416.** On the 8th of January 2009, the liquidator e-mailed Dobson again. Dobson responded later that day, apologising for the *"delay"* (his last response had been in May of the year before) and stating: ...*"the fee was calculated following the disposal of the business in October 2006 by reference to the additional costs and expenses of administering and monitoring the facilities caused by the financial difficulties of Company (sic) and its long trading in administration..."*³¹⁷ **8/2/941**

³¹² ex.p.66320.

³¹³ No copy of the served response has been located, but from the references in subsequent correspondence its content must have been close to Pear's draft.

³¹⁴ ex.p.66323.

³¹⁵ ex.p.66324.

³¹⁶ ex.p.66325.

³¹⁷ ex.p.6630.

- 417.** The liquidator replied, pressing Dobson for details, including the seniority of the Bank employees concerned, the time involved and the rates applied to calculate the charge. Dobson provided facility letters, but the liquidator replied, *“It is not possible, on the basis of the information supplied to date, to understand how the charge of £150,000 was determined. Are you able to provide any further clarification of this?”*³¹⁸ **8/2/939** The liquidator chased Dobson for an answer on the 19th of January and the 3rd of February³¹⁹.
- 418.** On the 4th of March, Dobson e-mailed the liquidator: *“I can confirm that no breakdown of the fee was requested by or provided to the administrators. The fee was discussed and its quantum was not challenged...”*³²⁰ **8/2/937**
- 419.** The same explanation was repeated during 2009 by Dobson³²¹ and by the Bank’s solicitors³²² to solicitors acting for the administrative receiver of a subordinate Eyesaglow debenture holder who were also questioning the fee. In one letter, Dobson explicitly drew a distinction between the fee paid to Quayside as managing agents and the fee due to the Bank for its work³²³.
- 420.** It is clear that Dobson deliberately misled the administrators over the true nature of the fee. He had agreed with Mills to pay Quayside a ‘success fee’ long before he sent Andrew Pear the reconciliation of fees to be paid to the Bank. If this was all above board and he had nothing to hide, why did Dobson not tell Pear that the fee was a ‘success fee’ due to Quayside instead of allowing him to pay the sum in the honest belief that it represented proper consideration for HBOS’ work on the case?
- 421.** Further, Dobson continued to hide the fact that he had paid the money to Mills even when he was party to a subsequent detailed enquiry into the nature of the payment by the liquidator, prompted by HMRC. He directly misled the liquidator

³¹⁸ ex.p.66335.

³¹⁹ ex.p. 66334.

³²⁰ ex.p.66350.

³²¹ ex.p.66378.

³²² For example, ex.p.66384.

³²³ ex.p.66381.

and allowed Andrew Pear and the Bank's solicitors to make what were inaccurate statements, based on his false representations, to the liquidator and others.

422. The truth was that Mark Dobson, like his boss Lynden Scourfield, had been corrupted by David Mills and his money. An analysis of Dobson's bank accounts reveals that he received three payments by cheque into his personal account from Mills' company Knightingale Investments Limited.

423. The cheques, each for £10,000, were paid into Dobson's account on the 20th of December 2005 (cheque dated 11th of December 2005³²⁴)**11/2/1055** the 3rd of July 2006 (cheque dated 1st of May 2006³²⁵)**11/3/1056** and the 20th of December 2006 (cheque dated 26th of October 2006³²⁶)**11/4/1058**. All three cheques were signed by David Mills.

424. Dobson worked for HBOS, not for Mills or Knightingale. Despite this basic truth, the payments to Dobson appeared in the Knightingale accounts.

425. The Brett Adams audit files for Knightingale show that the 2005 payment was accounted for as "*consultancy*" expenditure. The 2006 payments were described as "*M Dobson consultancy*" and accounted for as "*Research / consultancy*" expenditure.

426. In both years, the payments to Dobson were recorded as expenditure affecting the profit / loss of Knightingale and its tax liability. The accountant responsible for auditing Knightingale and preparing the company accounts was Jonathan Cohen. He, no doubt at the request of Mills, had created a fiction designed to give legitimacy to the bribes. It will not surprise you that Dobson made no reference to receiving £30,000 in consultancy fees from Knightingale in his tax returns³²⁷.

³²⁴ ex.p.68944.

³²⁵ ex.p.68955.

³²⁶ ex.p.to be served.

³²⁷ See Appendix 3 to Mesher's report on Dobson.

427. The second of the Knightingale cheques to Dobson is dated a month after Mills had signed the letter of engagement on behalf of Quayside to manage Eyesaglow for the administrator. The third cheque is dated the day before Dobson e-mailed Andrew Pear, informing him of the level of the Bank's administration fee for Eyesaglow.

428. In his police interview, Mills provided an explanation for the payments:

*"Mark Dobson had some personal issues; he was a friend of mine. He asked for a loan of £20,000. I gave him two cheques of £10,000. He contacted me and said he had lost one cheque so I provided him with appropriate replacement cheque. I was unaware that he had presented all three."*³²⁸

Mills went on to say that he had not been re-paid and thought the sum he'd lent was £20,000.

429. This is a manifestly untruthful account by Mills, designed to explain what he knew were corrupt payments he had made to Dobson. His account is, of course, contradicted by the accounting records of Knightingale discussed above. It also doesn't explain why a personal loan to a friend would be made from a limited company account, or why the three cheques were spread out over the course of a year.

430. Mills was also asked about the Eyesaglow 'success fee'. He said that it was a fee for work done and that Dobson had told him that he was entitled to "*some more money*" on top of the Quayside fees. He said that the money went into the Richard Paffard account because he was in the middle of closing Quayside and he was trying to keep money out of the company.

431. In December of 2009, Mark Dobson was asked by the team investigating the allegations surrounding the HBOS Reading office whether he recalled a 2007

³²⁸ Mills interview, tr.p.442.

arrangement fee paid to Justus;³²⁹ he said that he didn't. In fairness, Dobson may not have been aware that Mills transferred the fee to Justus from Richard Paffard. However, Dobson was sent a follow-up e-mail, in which he was asked whether he could *"recall any details in relation to the company Justus or the fee paid in relation to Eyesaglow³³⁰."* Dobson eventually replied on the 11th of January, simply stating, *"I cannot"*³³¹. **8/8/969**

432. In his police interview, Dobson was asked at length about whether he recalled the name Eyesaglow, whether he had been the HBOS relationship manager for the account and whether he had authorised the transfer of the administration fee to the Richard Paffard account. He chose not to answer.

433. Nor was Dobson forthcoming when asked about the hospitality he had accepted from Mills.

434. In June 2006, Dobson attended the Royal Enclosure at Ascot as part of a group including Lynden Scourfield. The bill was paid for by Quayside³³². This was just after he had insisted on the appointment of Quayside to manage Eyesaglow in administration and agreed the 'success fee' with Mills.

435. And, as you will recall, in November 2006, Dobson was part of the group, including Scourfield, who celebrated Mills' 50th birthday in Thailand. His business class flights had been paid for by a Bradman Lake cheque³³³. A group photograph shows Dobson smoking a large cigar whilst Mills beams proudly³³⁴. **PHOTO** This was a matter of weeks before Dobson transferred the HBOS Eyesaglow administration fee to Mills' account.

³²⁹ Paragraph 56 of the interview note, ex.p.27141-2

³³⁰ ex.p.66457.

³³¹ ex.p.66464.

³³² ex.p.64456. Alison Mills made the arrangements on behalf of Quayside.

³³³ ex.p.66072.

³³⁴ ex.p.167497.

436. Neither of these trips was declared to HBOS on Dobson’s hospitality register, although that register did include invitations to Henley, rugby matches and like events from other firms.³³⁵

³³⁵ ex.p.25416-39.

COUNT 2 DM, LS, JCo & AM: CLODE: THE 'BANK WITHIN THE BANK'

- 437.** Clode³³⁶ was set up to provide interest-free credit to consumers in high-street shops; it made money by charging a corresponding fee to the retailer for the service³³⁷. The company banked with HBOS.
- 438.** By 2001, due to various factors, Clode had been transferred to the Impaired Assets division of the Bank. In September of that year the total limit of Bank facilities to Clode was £3.152m and the drawn position was £2.939m³³⁸.
- 439.** Scourfield had involvement with Clode from at least September of 2001. On the 9th of May 2002, a meeting was held to discuss the financial position of the company. It was attended by Scourfield for HBOS and representatives of Clode including Colin Clode, the company's founder, and Nick Davies who had been appointed CEO in March of that year.
- 440.** At the time Clode was, "*operating within its £2.9 million overdraft facility*" and Scourfield stated that the Bank's funding would continue if the financial position did not deteriorate. Scourfield suggested David Mills as a suitable non-executive director "*to place into Clode*"³³⁹ and Mills was appointed in September of 2002. Alison Mills was appointed a fellow director in March of 2005.
- 441.** On the 4th of September 2002, Scourfield sent Davies a letter, confirming that the Bank would continue to provide the £2.9 million overdraft³⁴⁰.
- 442.** Over the next four to five years, Scourfield facilitated a huge increase in HBOS lending to Clode by way of overdraft and Cash Flow Finance³⁴¹. He did this without obtaining appropriate internal sanction.

³³⁶ The company name changed over time. See Mesher, Clode report at para.3.2, ex.p.170490 for an overview.

³³⁷ The business expanded into dental care, etc.

³³⁸ CA of September 2001, prepared by Alan Evans of the HBOS South Wales business centre, at ex.p.73717.

³³⁹ Minutes of the meeting are at ex.p.73860.

³⁴⁰ ex.p.73865.

³⁴¹ Conveniently summarised in chronological order at by Craig at Tab 75 of CCr/4, ex.p.74237-47.

443. Scourfield was driven by his corrupt relationship with Mills. His readiness to continue to provide HBOS funds to Clode facilitated Mills' ability to pursue his wider business interests.

444. By April of 2003, just seven months after joining the board of Clode at the request of Scourfield, Mills had completed a management buyout of Clode. The new owners were Nick Davies (24%) and Mills' company Quayside Corporate Services (76%)³⁴². Mills wrote to Scourfield on the 2nd of April, confirming the MBO, stating that it was funded by Quayside and adding that, "*Quayside are committed to invest a further £250,000 within 30 days as share capital to strengthen the balance sheet. This was conditional on the bank also revising its margin charge on the overdraft.*"³⁴³ **14/13/1200**

445. The Bank files do not contain any credit paper or legal documentation summarising the detail of the MBO or seeking approval of the change of ownership. Nor do they contain any evidence that the Bank had considered or consented to the process.

446. The principal cause of Clode's increasingly voracious appetite for HBOS cash is revealed by the content of an e-mail from Davies to Mills dated the 29th of September 2003. Davies confirmed that Clode intended to make loans to two companies, Visda Technology Ltd (£100,000) and Brightsun Ltd (£500,000)³⁴⁴, which, Davies noted, would increase Clode's overdraft to £3.3 million³⁴⁵. **14/17/1206-07**

447. This was the first outward sign of Mills' decision to take Clode in a radically new direction.

448. Davies recalls that Mills had not been happy with the rate of growth after the MBO and that he suggested that, ..."*he would be able to facilitate corporate lending*

³⁴² Quayside's ownership at that point was: Mills (38%), Graham Hayes (38%) and Portland Registrars (24%).

³⁴³ ex.p.73883.

³⁴⁴ See Deloitte's Project Windsor report for a summary of Brightsun, at ex.p.84828, 54-56 and 97-99. Set up to buy a club from Mezzanine (of which Mills was a director), Mills was later to become the owner

³⁴⁵ ex.p.37852.

*on an ad hoc basis...*³⁴⁶ Davies acknowledges that, *“These new corporate loans were certainly substantial in terms of the amounts...and they were completely different to the retail finance that we had been doing up until that point.”*³⁴⁷

449. Although Davies, as a businessman, was sanguine about Mills’ new strategy (...*“it was, in my mind at least, something that David wanted to do and something where we could make some money where the opportunities arose...”*³⁴⁸) the attitude of the Bank towards the change of direction would have been very different had anyone other than Scourfield and the Cash Flow Finance division been aware of what was happening.

450. In fact, the Bank, outside Scourfield and the Cash Flow Finance division (which regarded itself as subservient to Scourfield) was completely unaware of Clode’s venture into corporate lending at the time. This was wholly wrong.

451. Colin Clode, who remained as chairman for a few months after the MBO, was shocked to be told that Clode had begun to engage in corporate lending. He comments:

“My staff...were not in my opinion trained for that kind of lending, which would require specialist knowledge and experience. We had never discussed this type of lending with our bankers...and certainly had no mandate within the facility agreement to do so. Corporate lending would have required a large pot of money as opposed to the individually small retail loan business that had been Clode’s.”

452. There is no doubt that Scourfield had full knowledge of the corporate loans strategy from the very outset. Davies wrote to him on the 17th of November 2003, following up a meeting of the previous week, stating that Clode was keen for a, *“working capital overdraft with separate revolving credit line for large corporate*

³⁴⁶ Davies, st.p.1277.

³⁴⁷ Ibid, st.p.1279.

³⁴⁸ Davies, st.p.1280.

*deals” and that the firm ...“currently estimate corporate lending of £850k during November”.***14/19/1213-14**

453. Davies also attached a document, headed “*Corporate deals pending as at 17/11/03*”, which lists £350K Seoul Nassau, £500K Simon Jay, £200K boat, £300 airline and £1m land³⁴⁹.**14/20/1215**

454. That list of pending corporate loans is the first documented indication of how Mills was intending to use Clode to finance his own, wider business interests. Mills was already a director of Seoul Nassau³⁵⁰ and would become a part owner of the firm through Sandstone and he would become a director and majority shareholder of Simon Jay³⁵¹.

455. None of this would have been possible had it not been for the corrupt relationship which Mills enjoyed with Scourfield. It was Scourfield who had recommended his appointment to the board thereby enabling Mills to take control of Clode within months of having been appointed. Having taken over, Mills changed the entire lending ethos of Clode and used that corrupt relationship to borrow more and more of the Bank’s money to finance Clode’s corporate lending as it expanded over the years. Those loans were then used by Mills as a ready source of funding for businesses in which he had an interest and via which he unjustly and dishonestly enriched himself and his associates. Clode was the cash-cow; not for nothing has it been named ‘the bank within the Bank’.

456. On the 17th of January 2004, Scourfield authorised a cash flow finance facility for Clode, with a limit of £6 million³⁵²; the facility was provided to the company in February of that year³⁵³. Cash Flow Finance (‘CFF’, also known as ‘invoice

³⁴⁹ ex.p.73921-2 and 73931. Loans were indeed advanced to Seoul Nassau and Simon Jay. “boat” may refer to a loan to Bluesky Enterprises Ltd, a Mills-related Isle of Man entity which purchased a boat named Invictus.

³⁵⁰ From the 1st of November 2003, Mesher Mills report, Exhibit 1, ex.p.75567.

³⁵¹ From the 30th of April 2004, Mesher Clode report para. 5.116, ex.p.84550 and Mesher Mills report Exhibit 1, ex.p.75567.

³⁵² ex.p.73933.

³⁵³ ex.p.73938.

discounting') is an arrangement whereby funding is provided by the Bank to a client upon production of sales invoices³⁵⁴.

457. Approval for CFF was required in line with the usual authorisation process and it would have been Scourfield's responsibility to ensure that he obtained this approval from his line management. However, no credit sanctioning documents either proposing or authorising this very substantial additional facility to Clode have been identified.

458. On the 20th of May 2004, Scourfield increased the CFF facility to £8 million³⁵⁵ and on the 13th of July to £10 million³⁵⁶. By that later date, Clode was overdrawn by £1.016 million in its current account and by £7.794 million in its CFF account.

459. By November of 2004, Clode's total HBOS borrowing stood at £11.713 million and by December it had risen to £12.203 million. Clode's indebtedness to the Bank was now more than four times the amount it had been when Mills had been appointed to the board in 2002.

460. The CFF team conducted regular audits of Bank customers to check the security of the book debt. Importantly, Clode was a 'stream two' CFF client, which recognised that it was already at 'high risk' and meaning that any losses on the CFF account would be borne by the High Risk division. Effectively, the High Risk division of the Bank was underwriting the facility.

461. In Clode's case, it was Scourfield's responsibility as the high risk manager to assess the company's trading performance and to make proper decisions on the level of lending that was appropriate and sustainable for the company.

³⁵⁴ See Baxter. St.p. 1267 for a full explanation of the workings of CFF.

³⁵⁵ ex.p.73948.

³⁵⁶ ex.p.73955.

462. The audit reports produced by CFF for ‘stream two’ clients were provided to the CFF manager and to the relevant high risk account manager, Scourfield, but were not disseminated more widely within the Bank.

463. It was left to Scourfield as the high risk manager to decide whether to implement any of the recommendations in the CFF reports and whether to escalate any concerns noted therein to his line management.

464. A CFF audit report dated 21st of March 2005, identified Bradman Lake, Club 328, Simon Jay and Sandstone as being companies of which Mills was a director and which were therefore considered ‘associated’ to Clode, with a total intercompany debt of £1.786 million.

465. The report warned: *“The [account manager] must ensure that [the Bank’s] security is not infringed and there is no conflict of interest between David Mills’ non-executive directorship with the client [Clode] and his relationship with the debtors.”*³⁵⁷

466. The auditor was not aware at that time that, in addition to the four companies identified, Mills was also a director of Corporate Jet Services (‘CJS’) (and of Seoul Nassau (SNUK), De lane Lea, First Vending, Quayshelfco 1032 and Blue Sky Enterprises). CJS was the largest Clode debtor by some margin. Indeed, all or almost all of the top debtors of Clode were connected to Mills³⁵⁸.

467. The report went on to note that Bradman Lake was itself in receipt of CFF funding and should, therefore, be excluded from that facility because of the common directorship of Mills. The author of the report, Ian Baxter, comments:

“My report makes it absolutely clear to Scourfield that over a third of Clode’s lending is to companies as opposed to individuals and that in at least one of the companies, Bradman Lake, David Mills is on the board of Clode and

³⁵⁷ ex.p.26130.

³⁵⁸ See table at ex.p.26129.

*Bradman Lake and is therefore open to compromise or collusion and should not be funded by CFF.*³⁵⁹

His report concluded by noting that Scourfield would provide guidance as regards the potential exclusion of Bradman Lake.

468. Scourfield had the benefit of clear and timely warnings regarding Clode's activities. That he chose not to act on them is testament to his deliberate disregard for proper process in pursuit of his corrupt agreement with Mills. Of course, at the time of the 2005 audit, he knew full well of Mills' involvement with Bradman Lake, Corporate Jet, Seoul Nassau and De Lane Lea etc., and yet there is no evidence he sought to raise that issue with CFF on sight of their report.

469. Baxter prepared a further CFF audit report in October of 2006³⁶⁰. Companies identified as having common directorships with Mills on this occasion were Sandstone, Corporate Jet, First Vending Services, Acraman 405 and Knightingale Investments, with a combined debt of £3.603 million.

470. Scourfield had attempted to re-assure CFF on this issue at the time of a February 2006 audit and his comments were pasted into the October report: *"High Risk wrote: In terms of David Mills directorships these are effectively non-executive roles which have enabled Mr Mills to introduce business to Clode. It is High Risks view that BoS are secure and there is no need to raise reserves."*³⁶¹ **14/32/1406**

471. Despite Scourfield's confidence, Baxter expressed his concerns more strongly than he had in his March 2005 report in which he wrote:

"Whilst it has been advised by High Risk that David Mills was a non-executive director, this still means he has influence on both companies and is aware of the

³⁵⁹ Baxter, st.p.1271.

³⁶⁰ KS/6, ex.p. 67008.

³⁶¹ ex.p.67014 and see 66957 for February 2006 comments by LS.

*finances, hence the reason for the auditor again strongly recommending these not be funded....*³⁶² **14/32/1406**

In October he added:

“The large percentage of corporate loans with a common directorship (23% of the ledger) is of concern” and highlighted the risk that Mills’ interest ... “could see funds obtained from our client [Clode] by way of loan and therefore discounted by BOSCF, to support an otherwise ailing company, if traditional funding was not available.” **14/32/1407**

Baxter was unaware of just how prophetic that final warning was; that is precisely what Mills was doing.

472. Clode’s total indebtedness to HBOS at the time Scourfield left the Bank in March 2007 was circa £20.585 million. By way of comparison, when Mills was appointed to the board Clode was operating within its £2.9 million overdraft facility. A sevenfold increase in indebtedness to the Bank.

473. The only document post 2002 which has any resemblance to a credit application in respect of the HBOS facilities granted to Clode is a ‘memorandum’ from Scourfield to Paul Burnett dated the 10th of January 2006. **1/5/60-62**

474. It was included in the set of papers sent to Burnett for comment in 2007 by Tom Angus during Angus’ investigation into Scourfield’s portfolio³⁶³. There is no evidence Burnett had sight of it, nor is it signed by any party. Burnett denies ever having seen the papers at the time they were purportedly sent to him³⁶⁴. **1/6/78**

475. The memorandum is, in any event, a wholly misleading document. There is no mention of corporate lending, despite the fact that Davies had notified Scourfield

³⁶² ex.p.67014.

³⁶³ JP/9, ex.p.541.

³⁶⁴ ex.p.511 and Burnett, st.p.40.

as recently as November 2005 that £6.8 million of Clode's lending was in that sector³⁶⁵.15/15/1669

476. There is no doubt that Scourfield deliberately hid Clode's corporate book from Burnett and his other line management.

477. Burnett's position should be considered in the light of the above. He is clear on the point: he had understood that Clode was a retail lender and it was not until Scourfield's departure from the Bank and the subsequent investigation that he was aware that the company had been lending to corporate customers. Whilst Burnett can be criticised as a manager for failing to spot the unsanctioned escalating debt recorded on the monthly crib sheets³⁶⁶, his failings in respect of the nature of the loans resulted from Scourfield's dishonesty and deceit.

478. Davies describes the "*historic relationship*" between Scourfield and Mills and emphasises that, aside from CFF, he was not aware of anyone at HBOS other than Scourfield dealing with Clode. Tellingly, he states:

*"I do not recall any occasion when Mills was seeking additional funds, that Scourfield suggested that he needed to seek higher authority to agree the additional monies...whenever there was a request to increase either [the overdraft or CFF] it was made to Scourfield and if he said yes either of the facilities was increased straight away."*³⁶⁷

479. Burnett recalls attending a 2006 presentation given by Quayside on various companies for whom they were ostensibly providing consultancy services and at which both Mills and Scourfield were present:

"At no time during the Clode presentation was I given any information that Clode was lending to anyone other than that which had been agreed during the sanctioning process, to customers of High Street Boutiques. Lynden

³⁶⁵ ex.p.38478. It finishes with an invitation to LS for the Wales v Australia match in Cardiff.

³⁶⁶ See McMillan, st.p.1163.

³⁶⁷ Davies, st.p.1278.

*Scourfield...must have known that Clode were lending outside of the agreed parameters and at this meeting allowed Mills and others to lie to me about the true trade of the company. There was never any mention of corporate lending by Clode at any time during the meeting.*³⁶⁸

480. Clode's corporate loan activity was also completely absent from the various business plans produced at this time. For example, a plan dated October 2004 (front cover: 'Healthcare Finance, Retail Finance, Fashion Store Card') lists Clode's products as interest free revolving credit and interest bearing retail loans, personal loans and payment protection insurance and makes no reference to corporate lending.³⁶⁹ **15/8/1536-60**

481. Similarly, the minutes of an 18th of October 2006 Clode 'review meeting' between Davies and Scourfield, but which was also attended by another Bank employee, David Hurst, make no reference to corporate lending.

482. This lack of disclosure was driven by a desire to conceal something much more serious than the fact that Clode had diversified into a different sector of the loans market without HBOS sanction. As stated above, most of the companies to whom Clode lent were associated in some way with Clode's director and major shareholder David Mills, by virtue of his ownership or directorship of them or his role as a consultant to them.

483. Furthermore, many were customers of HBOS who were considered to be at high risk, whose accounts were managed by Lynden Scourfield, and, who were in receipt of high levels of Bank funding. Moreover, Mills had first become involved in most of the firms through Scourfield and was receiving large amounts of money from them in fees, salary, dividend or commission (or all four) as a consequence.

484. Thus Clode became a bank within the Bank. HBOS money, fed to Clode by Scourfield, was in turn lent on to companies who were themselves being kept afloat

³⁶⁸ Burnett, st.p.1126.

³⁶⁹ ex.p.26071. See also undated plan (early 2007?) at ex.p.26225.

by HBOS money, also fed to them by Scourfield. Mills needed to ensure that the various companies were kept in HBOS funds to enable him to continue to extract his unjust rewards and Clode was one of the means he used to achieve that. Clode also lent to Mills' own companies, Sandstone, Knightingale and Paffard and Co.

485. This arrangement was deleterious to both Clode and to the distressed companies to whom it lent money. A large part of Clode's loan book began to consist of unsecured bad debt, which ultimately had to be written off by HBOS.

486. The Bank eventually wrote off £13.661 million in respect of Clode³⁷⁰. The burden of the Clode loans further weakened the financial position of the various companies. Again, HBOS, as the major creditor, was forced to write off much of their losses.

487. Scourfield's managers at HBOS have a common view of the situation. Burnett recalls that at the 2006 Quayside presentation he was not aware that Mills was chairman of Clode or a major shareholder. His view is that to be both a shareholder and in receipt of fees for consultancy services would be, "*a clear and obvious conflict of interest*".

488. As to the essentially cyclical nature of Clode's corporate lending, Burnett states:

"It would be an absurd suggestion that I or any other responsible banker would sanction the lending of large sums of money to one of its own distressed customers to then lend on to other distressed companies."

489. Colin Clode's view accords with the HBOS position:

"I have been told...that Clode...overdraft and finance rose to in the region of £20 million by 2007 largely in the corporate area and that many of the

³⁷⁰ Cummings, st.p.1248.

corporate lenders were companies that David Mills was involved on. I find this completely astonishing. The lending of monies in this way...I would consider to be a serious conflict of interest and therefore inappropriate.”³⁷¹

490. Davies accepts that he was aware that Mills was involved, “*in all of the companies that Clode lent money to*” and didn’t consider it inappropriate because he thought that, “*Clode were making money from those deals.*” However, Davies was not aware of the precarious financial situation of the companies and the inherent risk that they represented to Clode as debtors. He adds: “*Mills had his finger on the pulse of all of the corporate loans, so I would have expected him to tell us if there was a problem.*”

Review of loans

~~**491.** A comprehensive schedule, showing loan date, principal amount, arrangement fee, interest, amount re paid and amount written off has been produced³⁷².~~

492. Clode advanced more than £18m to companies in which David and / or Alison Mills held shares or of which they were directors. Over £6.5m of that lending was written off by Clode³⁷³. In addition, there was £4.1m worth of loans to individuals connected to Mills or to the companies he operated. **CLODE TABLE**

Loans to Mills owned entities

493. David Mills was the majority shareholder in Acraman (405) Ltd. Its total debt to Clode including the loan advanced and fees and interest was £624,375 of which only £52,032 was repaid. £572,343 was written off.

³⁷¹ Clode, st.p.1232.

³⁷² Mesher Clode report, Appendix 7d, ex.p.84625.

³⁷³ Ibid, Appendix 7b, ex.p.84623.

- 494.** David Mills was the majority shareholder in First Vending Services Ltd which took out four loans from Clode which lent to FVS directly and via Sandstone. Its total debt to Clode including the loan advanced and fees and interest was £636,736 of which only £58,500 was repaid. £578,326 was written off in respect of the FVS loan and £715,320 in respect of the Sandstone loan which was onward loaned to FVS.
- 495.** The company entered administration in November of 2007 owing HBOS £4.85 million. The statement of affairs, prepared and signed by Mills, provides a list of creditors but does not include Clode. Mesher: *“As a director of Clode as well as FVS, I would expect Mr Mills to have been aware of the amount that FVS owed to Clode.”*
- 496.** Justus Ltd was incorporated in the Isle of Man as a yacht management business. Mills was the owner³⁷⁴. Clode loaned the company £500,000 on the 1st of February 2007, which was to be used to settle an existing Clode loan from 2006. Security was provided by way of a collateral charge over the preference shares Mills held in Clode. The loan was disclosed as a related party transaction in Clode’s accounts.
- 497.** The KPMG IBR of June 2008 classified the loan as a shareholder loan, for the benefit of Mills. According to Davies, £334,811 was written off by Clode, although Clode’s accounts for year ending March 2009 state that it was re-paid in full. It is not clear why the full amount of the loan was not re-paid
- 498.** Knightingale Investments Ltd was incorporated in November 2004. David Mills owned 100% of the shares until October 2008 and he and Alison Mills were directors of the company. Mesher has been unable to discern what the business purpose of Knightingale was³⁷⁵.

³⁷⁴ ex.p.20772.

³⁷⁵ See Mills’ benefit section, above.

- 499.** On the 30th of January 2006, Knightingale borrowed £550,000 including a £50,000 arrangement fee from Clode. The application was signed by David and Alison Mills. The debt, including interest, rose to £623,123, of which £389,453 was written off by Clode. (This loan appears to be have been advanced to Remnant Media and used in part for the purchase of SMD.)
- 500.** NR2 LLP ('NR2') was a limited liability partnership with a principal business activity of property investment. Members of the partnership included Mills, Roger Hawes and Burwell Nominees, a subsidiary of Burges Salmon.
- 501.** In February of 2007, NR2 borrowed £262,000 from Clode. The loan was not shown in NR2's accounts and was replaced with a new loan of £291,721 (original loan + arrangement fee + interest) in February of 2008. Clode eventually wrote off £256,708 against this second amount. The loans were not disclosed in Clode's financial statements as related party transactions.
- 502.** David Mills was the sole shareholder of Paffard and Co Ltd ('Paffard')³⁷⁶, which was incorporated in July of 2005. The sole function of this company appears to have been to receive fees due to David Mills when he acted as a sole trader. A loan agreement dated the 3rd of May 2006, signed by David and Alison Mills as directors of Paffard, shows that the company borrowed £312,500 from Clode; the balance had increased to £368,750 by September 2007. No repayments of capital or interest were made either by the company or by Mills personally and the money was subsequently written off in its entirety.
- 503.** Paffard did not disclose the loan in its accounts³⁷⁷ and nor was the loan disclosed as a related party transaction in Clode's financial statements. Mesher: "*I would expect it to have been disclosed as such given that Mr Mills was a director and shareholder of both companies, particularly given that the write off would appear to*

³⁷⁶ Not to be confused with Richard Paffard Consultancy, Mills' sole trader vehicle.

³⁷⁷ Paffard filed a dormant set of accounts to 31st of July 2006, stating that the company did not trade and did not expect to for the foreseeable future. In view of this, it is difficult to understand how it was thought that Paffard would ever be able to service the loan. Application was made to strike the company off in May 2008.

*be for the full amount borrowed.*³⁷⁸ Given that this company existed solely to receive fee income for DM, it is suggested that Mills used the money for his own benefit.

Loans to other HBOS High Risk customers linked to Mills

504. Magenta Studios Ltd, (formerly FTR and part of the Theros Group) was a high risk customer of HBOS for which Scourfield had responsibility. Quayside was engaged by the company and Mills had become a director in 2004³⁷⁹.

505. Under a loan agreement dated the 1st of October 2005³⁸⁰, Magenta borrowed £255,000³⁸¹ from Clode. The agreement was signed on behalf of Magenta by Michael Bancroft and David Mills.**15/23/1687** A guarantee was provided to Clode by Theros to cover Magenta's payment obligations under the loan³⁸².**15/24/1693** Bancroft wrote to Nick Davies at Clode on the 13th of October 2005, enclosing signed copies of the loan agreement and guarantee: "*David has asked that these are now executed and the payments are sent to Roger Hawes at Burges Salmon for them to place in their client accounts.*"³⁸³**15/25/1701**

506. The loan was to cost Magenta £35,472 in interest. Repayments were made between December 2005 and March 2007 at the stipulated rate of £12,103 per month, but ceased when Magenta went into administration in April 2007. By that date, Magenta owed around £21 million to HBOS.

507. Mills and Bancroft were well aware of the precarious financial position of Magenta and must have known that the Clode loan was unlikely to be repaid.

³⁷⁸ Mesher, Clode report, para.5.55, ex.p.84534.

³⁷⁹ See Theros section, below.

³⁸⁰ Part of NJD/5, ex.p.67846.

³⁸¹ Including a £5,000 arrangement fee.

³⁸² ex.p.67856. Dated the 1st of October 2005 and also signed by Mills and Bancroft.

³⁸³ ex.p.67853.

- 508.** £96,824 remained outstanding on the Clode loan to Magenta when the latter went into administration. This was written off by Clode as it was unsecured and both Magenta and Theros clearly lacked the ability to settle the debt.
- 509.** Clode lending underpinned the purchase of Simon Jay by Mills, Bancroft and others in 2004. The loans were partly re-paid by Simon Jay itself, but £471,568 was eventually written off³⁸⁴.
- 510.** Seoul Nassau was an HBOS IA customer for whom Quayside was engaged. Mills was a director from 2003 to 2007. The company borrowed from Clode and Clode wrote off £60,471.
- 511.** Clode made loans to Bradman Lake directly, which were repaid. However, a loan to Sandstone on the 7th of December 2006 for £790,000 was on-lent to Bradman Lake and not repaid. £802,864 was written off in respect of this loan.
- 512.** A loan to Sandstone on the 27th of February 2006 for £850,000 was partly used to settle a loan to Quayshelfco (1082) Ltd / BLG Holdings Ltd, which was a subsidiary of Sandstone and the holding company for BL Group Ltd³⁸⁵. Clode eventually wrote off £811,450.
- 513.** Strand Magazines Ltd ('Strand') was incorporated in July 2006 and was owned by Mills through Sandstone. It purchased a magazine called 'What's on in London' from Remnant. Clode loaned Strand £680,000 in November 2006 and £70,000 in March 2007. A mere two months after the second loan, Strand went into liquidation and both loans were written off in their entirety³⁸⁶.

³⁸⁴ See Simon Jay section, below, for a full treatment of this topic.

³⁸⁵ Bradman-Lake Group Ltd was a separate company, owned by Bradman-Lake Group Inc., an American company. Bradman-Lake Group and BLG Holdings Ltd operated from the same address and had directors in common, including Mills. They may have been run as a group, although their corporate structures do not show a link: Mesher, Clode report, para.5.85, ex.p.84542.

³⁸⁶ On the list of creditors attached to Strand's statement of affairs, Clode's address is given as Mills' home address.

514. Mills was involved in the sale transaction between Remnant and Strand. Mesher: *“I would expect Mr Mills to be aware of Strand’s financial position and likely prospects given his ownership interest (through Sandstone). The loans...seem high to be provided to a company that has newly started, with a lack of assets to provide security.”*³⁸⁷

Other related-party loans

515. Nick Davies borrowed £350,000 from Clode, secured by Mills’ preference shares in the same way as the Justus arrangement. Davies states that it was for the purchase of a house and accepts that it was never re-paid. Despite this, the Clode accounts for year ended March 2009 state that his loan was re-paid in full.

516. Graham Hayes, an associate of Mills and a director of Bradman Lake, owned 23% of the shares in Clode. He borrowed from the company and this was disclosed in Clode’s financial statements as a related party transaction. £311,133 was written off, although, again, the Clode accounts suggest it was re-paid in full.

517. Clode also lent to Simon Robinson, the founder of Remnant. Some of the lending was to enable Robinson to invest in Remnant. Overall, £685,330 was written off in relation to his Clode debts. In September of 2006, a loan of £60,000³⁸⁸ was made by Clode to Lynden Scourfield’s uncle, Lyn Scourfield. The stated purpose was to enable Lyn Scourfield to pay off debts to NatWest bank³⁸⁹..

518. £56,077³⁹⁰ was eventually written off the loan.

³⁸⁷ Mesher, Clode report, para.6.36, ex.p.84580.

³⁸⁸ Plus £600 arrangement fee and interest of £378.75 per month.

³⁸⁹ Ex.p.87823.

³⁹⁰ £65,145, including interest.

Cohen and Clode

- 519.** Brett Adams audited Clode's financial statements for years ending 2003 to 2007. Cohen accepted in interview that he was the audit partner of the firm.
- 520.** As auditor, he had a duty to the shareholders to examine the company accounts and to satisfy himself that the figures provided were accurate and realistic and that the business was viable and being properly managed. It must have been obvious to him as an experienced accountant and auditor that Clode was being run fraudulently for the benefit of Mills and his associates and was, in effect, trading whilst insolvent.
- 521.** He would have been well aware that many of the loans to Mills-related companies were inherently hazardous as many of those companies were themselves considered by HBOS to be at high risk. He was, of course, also the accountant for or had involvement in many of these firms and so would have had intimate knowledge of their true financial position.
- 522.** He would have seen that Clode's debtors were becoming increasingly long-term, whilst much of the bank borrowing was in the form of short-term overdraft facilities with the attendant risks.
- 523.** It would have been apparent to Cohen that the loans were a device to provide further funding for companies to whom HBOS would have refused further credit. The flow of HBOS money through Clode and onwards to the other companies would have been obvious to him and the potential prejudice to the Bank equally clear.
- 524.** It would have been apparent to Cohen that most of the loans were unsecured and that a default would expose Clode (and therefore HBOS) to very large and probably irrecoverable loss.

525. He ought to have satisfied himself that there was proper authority from HBOS for the increased level of lending from the Bank (in the form of a facility letter) and that the Bank had sanctioned the radical departure into the commercial loan business. There is no such documentation in the Clode audit files. He should also have queried why the corporate loans business was not referred to in the minutes of Clode board meetings or in the firm's business plan.

526. He would, of course, have been well aware that Mills was a director and shareholder of Clode and a director and / or shareholder of or otherwise connected to almost all of the companies to whom Clode lent. This conflict of interest alone should have put him on alert, particularly as some of the loans were barely disguised personal loans to Mills himself, for example, the loan to Paffard & Co Ltd.

527. As part of the audit, Cohen was required to consider whether the company was likely to continue as a going concern for twelve months following the date audit sign off. Mesher comments, *"given the level of borrowing...and the reliance on receipts from risky corporate loans, I would expect going concern procedures to be a key priority for the auditors."*³⁹¹

528. Cohen was hopelessly compromised. He and his partner in Brett Adams, Steven Davidson both took loans from Clode in December of 2006 in the sum of £151,500 each³⁹². The loans were advanced during the period Brett Adams was auditing Clode³⁹³. They were advanced without either Cohen or Davidson providing security and at a lower interest rate than Clode would normally apply³⁹⁴.

529. Just under £40,000 of each loan was written off and never re-paid by either Cohen or Davidson.

³⁹¹ Mesher Brett Adams report, ex.p.129931.

³⁹² Cohen's loan agreement is at ex.p.67372.

³⁹³ The 2007 audit report was signed on the 30th of January 2008.

³⁹⁴ 10%, rather than Clode's standard APR of 12.9%. The total interest payable would have been around £7,500 lower.

530. There was no entry in the financial statements of Clode to disclose these loans. Mesher notes that Cohen's acceptance of the loan was contrary to the ethical standards of the Auditing Practice Board: he was in a position to influence the conduct and outcome of the audit, the loan was not in the ordinary course of Clode's business and it was for a value greater than the materiality level Cohen had himself set for Clode³⁹⁵.

531. Mesher: *"there was a substantial risk that [Cohen] would be influenced by (or perceived to be influenced by) these loans in [his] decision as to whether to sign an unqualified ('clean') audit report for Clode..."*

532. Cohen told the police in interview that his professional body would probably disqualify him if they knew of his Clode loan.

Alison Mills and Clode

533. For a period of over five years, from March 2005 until June 2010, Alison Mills was a director of Clode. According to a Clode business plan, she joined the board on a part-time basis as Development Director, responsible for sales and marketing.

534. This was her only appointment to a company which was an HBOS high-risk client managed by Scourfield and owned and controlled by her husband.

535. Clode minutes record that she attended board meetings, including three aboard the Mills' yacht 'Powder Monkey'.

536. Alison Mills was paid a monthly salary of about £5,000 per month for her services as a director of Clode. A loan agreement dated the 22nd of January 2007 and signed by Alison Mills indicates that her company Wordsters borrowed £60,000 from Clode, with the money transferred on the 30th of January. There was no arrangement

³⁹⁵ See the Ethical Standard issued by the Auditing Practices Board, particularly number 23, at Exhibit 1 to Mesher's Brett Adams report, ex.p.129965.

fee and no interest charged³⁹⁶.**15/33/1757** The financial statements of Clode did not disclose any transactions with Wordsters.

537. Davies states that this 'loan' was, in fact, payment to Alison Mills in advance of twelve months salary to "*maximise tax benefits*", an arrangement he describes as "*highly unusual*".³⁹⁷ She was clearly handsomely remunerated for her role. Indeed, Mesher estimates that her Clode emoluments for the years 2005 to 2008 amounted to over £150,000.³⁹⁸

538. Additionally, the financial statements for Clode for year ended 31st of March 2007 disclose that Clode owed a company called 'Words and Pitches' £10,000. 'Words and Pitches' was a name under which Alison Mills traded when she became self-employed in 2004.

³⁹⁶ ex.p.67176.

³⁹⁷ Ibid.

³⁹⁸ Mesher Mills report page 18 (exhibits page 75445).

Introduction: group structure and Scourfield’s involvement³⁹⁹

539. Frank, Theake and Roskilly Ltd (‘FTR’) was a tie manufacturing company, based in Battersea and with a factory in South Wales. Its customer base was the large high-street retailers, including M&S, C&A, Debenhams and Next. In 1989, a management buyout had taken place which involved the creation of a non-trading holding company called Theros Ltd (‘Theros’) which owned 100% of the shares in FTR.

540. A secondary buyout had taken place around 1997. HBOS⁴⁰⁰ provided substantial working capital to Theros in the form of overdraft, loan and BACS facilities and had acquired a 29% shareholding by late 2000. The other major shareholder was a venture capital company called 3i.

541. However, FTR performed poorly and, less than a year into the secondary buyout, was seriously adversely affected by the trading difficulties encountered by M&S and by C&A’s decision to close its UK stores. FTR lost over 50% of its anticipated sales and cash inflow within a six month period and as a result its borrowing requirements increased steeply and suddenly⁴⁰¹.

542. The company had been subject to a degree of High Risk oversight from at least 1999. Both Paul Burnett and Lynden Scourfield had involvement with the account⁴⁰². By October of 2001, the debt to the Bank stood at £7.3m. The account was formally transferred to Scourfield in Reading in April of 2002.

³⁹⁹ See Mesher Theros report for detailed timelines at Appendix 3a-n, ex.p.75676-89 and a summary table at para.3.5, ex.p.75582.

⁴⁰⁰ Originally through the Bank of Wales, part of the BoS.

⁴⁰¹ Mott, st.p.897.

⁴⁰² See Craig, st.p.1510-14 and Burnett, st.p.1117.

543. Theros had decided to attempt to diversify into other product areas. To facilitate this, a new company called Multi Sourcing Group Limited ('MSG') was incorporated in March of 2002⁴⁰³. Gillian Blackburn, a former M&S employee, was approached to head up the new company, which would trade under the Theros umbrella, but which would be a separate entity from FTR and Theros. Blackburn was to develop a clothing product range in any segment except ties.

544. MSG was funded by the provision of further working capital from HBOS via FTR. This intercompany debt would be of significance later. Theros owned 52% of MSG, Blackburn 25% and John Mott, the MD of FTR 15%⁴⁰⁴.

545. Mott recalls having what amounted to a "*celebratory lunch*" with Scourfield before Christmas 2002, at which Scourfield gave the impression he was happy with the direction of the company and that Theros would continue to receive the necessary financial support from the Bank⁴⁰⁵.

546. Scourfield did indeed ensure that HBOS funds continued to be advanced to the Theros Group.

547. However, there is very little if any documentary evidence to suggest that Scourfield completed the required credit applications or that he sought the proper authority from his managers for the ever-increasing facilities he extended to Theros as a whole.

548. The Bank has been able to locate a letter from Scourfield to Theros' auditors, dated the 10th of May 2002, which states that the Bank, "*will provide sufficient funding facilities to the Company in line with cash flow forecasts prepared by the Company and submitted to the Bank, to enable it to pay its creditors as and when*

⁴⁰³ MSG was incorporated in March 2002.

⁴⁰⁴ For the detail of the group structure, see the diagram at Appendix 3a of Mesher's Theros report, ex.p.75676.

⁴⁰⁵ Mott, st.p.900

*they fall due for a period of at least 12 months from the date of writing.”*⁴⁰⁶

19/16/1903 Such a ‘letter of comfort’ would have required the approval of Hugh McMillan. No such approval has been located.

549. Although a credit application memorandum relating to Theros and MSG, dated the 13th of January 2003 and addressed to Burnett, was apparently drafted by Scourfield, there is no evidence it was sent to Burnett or approved by either him or McMillan⁴⁰⁷. **19/19/1912-9**

The introduction of Bancroft, Mills and QCS

550. In mid-2003, Scourfield told Mott that he wanted him to meet Michael Bancroft to see if Bancroft could, “*add any value to FTR*”. Mott realised that this, “*was something [he] had to do rather than something that [he] would do out of choice*”, not least because the Bank had the right to appoint a director as part of the investment agreement.

551. Mott met Bancroft shortly afterwards. Bancroft asked a lot of questions about how the company was run and told Mott that, although he had come with, “*grave concerns*” following what Scourfield had told him, “*there wasn’t a single thing he could suggest that the company should do that it wasn’t already doing.*” Despite this, Mott was asked to arrange for Bancroft to spend some time at the company to see if he could recommend ways of improving the company’s performance.

552. A few months later, Mott was called at short notice to a meeting with Scourfield and Bancroft at a hotel. David Mills was present and was introduced to Mott as being from QCS, a “*firm of consultants used by the bank to advise on difficult investments.*” Scourfield said that the Bank were unhappy with FTR’s progress and wanted Bancroft appointed as a non-executive director.

⁴⁰⁶ ex.p.72711.

⁴⁰⁷ ex.p.72721.

553. QCS had produced a document for the meeting, apparently based on Bancroft's observations, outlining how QCS felt profitability could be improved. Mott disagreed with much of the content⁴⁰⁸.

554. Despite Mott's "*obvious discomfort*", Scourfield insisted upon Bancroft's appointment as a director and Mott was informed of the level of fees that FTR would be required to pay for the services of QCS and Bancroft.

555. A letter of the 7th of July 2003 from Mills to Mott, with Scourfield and Bancroft copied in, discussed this development **19/25/1935-6**:

"I believe that we have come to an arrangement where QCS will provide the business and Michael Bancroft to attend your monthly meetings representing the bank's interest as a consultant to the company...John, I have worked with Bank of Scotland over the last few years on various projects and I am pleased to say that all of them to date have, or are having, a satisfactory result."

Mills went on to set out the fees for the initial six months:

"Quayside will charge £15,000 during the six months, monthly in arrears, plus any reasonable out of pocket expenses."⁴⁰⁹

556. The Bank has been unable to identify any formal letter of engagement for the appointment of QCS. This would usually be a requirement for the appointment of a turnaround consultant.

557. Christopher Stewart, Finance Director of FTR, recalls that the Bank essentially required the appointment of Bancroft: "*He was a difficult man who easily upset people but appeared to have a good relationship with...Scourfield at BoS. It was*

⁴⁰⁸ In particular, the recommendation to cease selling branded ex-stock to independent retailers.

⁴⁰⁹ ex.p.9106.

*clear that continued support from BoS was dependent upon the continuing involvement of...Bancroft*⁴¹⁰.

558. Very shortly afterwards, Bancroft became active within the company, although his formal appointment as a director was not until December of 2003. He divided his time (normally one or two days a week) between Cwmbran and Battersea. In late summer of 2003, following some poor months of invoiced sales, Bancroft told Mott not to contact Scourfield or the Bank under any circumstances, a demand that Mott regarded as *“highly unusual”*.

559. Mott’s view is that Bancroft’s presence was *“far from helpful”*, making people *“nervous and withdrawn”* by his management style and constantly reinforcing his *“superiority over key members of the management team”* and *“his own importance to the company”*.

560. In October of 2003, Mott was summoned to a meeting at Scourfield’s office in Reading. A fax memorandum **19/27/1943-4** from Bancroft to Scourfield, signed ‘Michael’ and dated the 6th of October, in which Bancroft sets out the *“list of terms / conditions plans / policies”* which he and Scourfield would be discussing with Mott later that day, suggests that Bancroft had already determined the direction the meeting was to take.

561. Bancroft summarised his ‘plan’ by numbered points as follows:

- “1. MJB to be appointed Acting Chief Executive with immediate effect.*
- 2. This is to be for a minimum period of 6 months with an option to renew.*
- 3. MJB will attend all board meetings and is to be invited to attend all management / departmental meetings.*
- 4. MJB will report directly to LS at BoS.*
- 5. No external announcement of the appointment will be made at this time.*

⁴¹⁰ Stewart, st.p.838.

6. *JM to remain as GMD or Chairman?*
7. *Chris Stewart to be terminated forthwith and JM to obtain all his computer discs etc.*
8. *Other directors and Executives to remain for the present.*
9. *MJB will spend the amount of time, which is necessary to organise and implement the re-structure but certainly no less than 3 days a week.*
10. *MJB will be assisted by Clive Fortis of BoS.*
11. *MJB to have access to all financial and administrative documentation and all correspondence.*
12. *MJB and CF to be provided with adequate office area in both London / Cwmbran asap.*
13. *MJB salary will be paid via Quayside but any day to day expenses will be claimed direct from the Company and will be vouched accordingly.*
14. *J Mott to formally acknowledge and agree to the appointment and to confirm in writing. (We can draft a letter for him).*
15. *JM to agree to make full disclosure of facts pertaining to the Company and its employees.*
16. *JM to agree to co-operate fully with MJB/CF at all times and to make himself available for meetings on receipt of reasonable notice.*
17. *MSG to be sold / disposed of a.s.a.p.”*

562. Bancroft demanded that, “*JM is to accept in principal the adoption of either proposal 3 or 4... (LS to decide).*”⁴¹¹ Both the tone and content of this document illustrate the contempt Bancroft felt for the existing management of Theros and his perception of the strength of his position vis a vis Scourfield and the Bank relative to theirs. He was a consultant engaged to assist the company, but it is clear that his real intention was to gain control of it.

⁴¹¹ ex.p.6430.

563. On this point, Burnett comments:

"I would have expected...Bancroft to have been discussing the issues in the letter with John Mott not Lynden. I would not have expected Bancroft to be discussing it with Lynden until the company had come to a decision on Bancroft's advice. My directions on the involvement of turnaround consultants...were discussed with my managers on numerous occasions and the direction was that it is the consultants [who] should work with the customer for the benefit of both the customer and the Bank."⁴¹²

564. At the meeting that day, Bancroft launched a tirade, describing FTR as the worst run company he had ever seen and made derogatory statements about Mott's management and the overall performance of the firm (despite his earlier complimentary remarks). Bancroft offered no positive suggestions of his own. Scourfield said that unless performance improved, he would look to remove Mott from his position.

565. Although he wanted to respond to what he regarded as very unfair criticism, Mott felt it best to keep his counsel and accept short term pain for long term gain both for the company and himself. Ultimately, the company was reliant on the continued support of the Bank in the form of Scourfield.

566. To avoid further criticism, Mott insisted that Bancroft be involved in every meeting to set operational targets for the next financial year and be committed to the new budget. The computer model suggested that the company would be back in profit in 2003/04.

567. Mott called Bancroft and told him the news. Bancroft said, *"Great, that means that I won't need to be here in FTR for very long"* and added, *"but please don't tell this to the Bank"*.⁴¹³ Mott thought this an odd response, but took it to

⁴¹² Burnett, st.p.1118.

⁴¹³ Mott, st.p.905.

mean that Bancroft wanted to be the one to give the good news to the Bank. A few weeks later, he was to understand what Bancroft really meant.

568. Mott and Stewart customarily took legal advice to ensure that Theros was not trading whilst insolvent and to cover the responsibilities of the directors. In November of 2003, the advice from their solicitor **21/1/2118-22** was that the group's "*prospects looked brighter*" following "*significant progress...in restructuring*", but that, nevertheless, Theros, FTR and MSG were all insolvent and only able to continue trading with the Bank's support⁴¹⁴. The total indebtedness to the Bank stood at around £11m.

569. The advice observed that the Bank had instructed consultants from QCS and that a "*steering group*" had been set up of which Bancroft and Mills were members, a development viewed as positive, as indicating the Bank's commitment to the firm.

570. However, the advice also contained the following prescient passage: "*I do however think that it is in everyone's interests that the role of...Bancroft is clarified. I understand that...Bancroft has been given the title "Director of Strategy" for the Theros Group. In my opinion, if...Bancroft is acting as a director he should be formally appointed so that there is no doubt as to his status.*" It went on to state that, unless this happened, "*he should confine himself to an advisory role, with his role strictly defined by the bank.*"

571. The advice also commented on the funding of the Group. It cited a June 2003 "*letter of comfort*" from Scourfield to Theros' auditors in the same terms as his letter of 2002 referred to above **[19/16/1903]** and recommended that a further letter be obtained addressed to Theros itself. Further: "*The letter should...be construed as a declaration of intent to provide funding to Theros for 12 months from the date of the letter rather than a legally binding commitment.*" The recommendation was to press Scourfield to write off or convert into equity a

⁴¹⁴ Blake Laphorn Linnell advice, 18th November 2003, ex.p.61445-9.

significant proportion of the Bank's debt *"because there is no realistic prospect of it ever being repaid in full."*

572. The FTR board determined to ask HBOS to write off £6 million of debt in an attempt to divorce future potential from past problems. Bancroft was fully aware of and in agreement with the proposal, but just ahead of a meeting with Scourfield on the 8th of December 2003, to Mott's *"amazement and dismay"*, Bancroft told Mott that he, *"had not had the heart to tell...Scourfield that the company would be asking [HBOS] to write off part of its debt and said that I would therefore have to break the news to him [Scourfield] in the meeting."*⁴¹⁵ Mott had expected the Bank to have been fully apprised of the director's intentions in advance of the meeting.

573. Bancroft turned up at the meeting with Scourfield who was accompanied by a lawyer for the Bank. Bancroft was *"welcomed onto the board"*, although *"his actual role...had yet to be identified."*⁴¹⁶ **21/4/2127-9** Mott presented the budget, which showed a deficit of £8.7m and Stewart requested the £6m write off. According to Stewart, Scourfield was *"angry and abusive"* at the write off suggestion. Blackburn recalls he *"went berserk in the meeting"*⁴¹⁷.

574. Scourfield asked Bancroft if he thought the projected budget figures were realistic. Bancroft said that he couldn't see how FTR could achieve such a significant turnaround. Mott was astonished, as Bancroft had been fully aware of the budgetary proposals and had not raised any concerns with his fellow directors. Stewart states, *"Bancroft was openly sceptical of the figures, despite the fact that the targets had been discussed and agreed by the directors prior to the meeting."*⁴¹⁸

575. Scourfield took Mott outside and told him he was dismayed that the write off proposals had been, *"sprung on him"*⁴¹⁹.

⁴¹⁵ Mott, st.p.908.

⁴¹⁶ Minutes, at ex.p.1451-3.

⁴¹⁷ Blackburn, st.p.770.

⁴¹⁸ Stewart, st.p.839.

⁴¹⁹ The minutes record, laconically, "There is no record of the conversation that took place during this time."

- 576.** Scourfield was apparently concerned that the Bank had no security over the funds advanced to MSG from FTR and demanded that either £750,000 of cash held in the MSG bank account be transferred to FTR or that the inter-company debt be assigned to the Bank.
- 577.** Following legal advice, the inter-company debt was assigned to the Bank the following day **21/5/2130**. Scourfield was later to sign away the Bank's protection, to allow MSG to be sold. However, none of the monies raised from that sale found their way to the Bank⁴²⁰.
- 578.** Christopher Stewart was told his services were no longer required a few days after the meeting. Bancroft had achieved the 'termination' of Stewart that he had sought in October. Mott thought his departure "*made no sense*".
- 579.** Bancroft became a director of Theros, FTR and MSG on the 8th of December 2003.
- 580.** In early 2004, Bancroft told Mott that he wanted a more substantial role within the company. Mott suggested they act as joint managing directors. At a subsequent meeting at Reading, Scourfield said that he wanted Bancroft to take over as managing director. Mott felt he had no choice but to agree, as the company needed the ongoing support of the Bank.
- 581.** Mott left FTR in April of 2004. His working relationship with Bancroft had become untenable.
- 582.** Blackburn was told by Bancroft that Mott had been involved in some "*dodgy dealing*", which Blackburn states she would be "*amazed*" were true as she had always found Mott very genuine, hardworking and honourable. This was an unfounded slur on Mott's character by Bancroft. He had earlier told Mott that

⁴²⁰ See Clothing Proceeds section, below.

Blackburn was unhappy with Mott's stewardship of the group and that she no longer wanted to talk to him. Again, this was untrue.

583. Mott's shares in MSG (15% of the company) were transferred to QCS. His shares in Theros were transferred to the joint ownership of Mills and Bancroft (19% of the company). Mills was appointed as a director of both Theros and FTR in April of 2004. There is no evidence of payments being made by QCS, Mills or Bancroft for the shares.

584. Hannah Levitt, the Sales Director whom Bancroft had tried to dismiss the previous year, recalls that after Mott left, *"things changed quickly"*. Board meetings ceased to be held and staff were marginalised. She left the company in October 2004. She fought to retain her Theros shares as part of her redundancy package, but had the impression that Bancroft wanted them. Her 2% shareholding was transferred to QCS in June of 2005.

585. Keith Porter was interviewed by Bancroft for a role at FTR. He began work as a consultant through QCS in June of 2004.

586. Porter's view of the company was straightforward. *"I discovered that the trading position of FTR was awful and I could not understand why the Bank was continuing to fund this business...bearing in mind the size of the overdraft, the sales figures and the order book."... "From my initial view of the...company, I could not see any way that the business could repay any of the losses that had already been incurred or be turned around to be a profitable company."*⁴²¹ He raised his concerns with Bancroft.

587. Porter also recalls that Cartwright, *"shared the same view as me that it was ludicrous [that] Bancroft wanted to keep [the company] trading, considering its*

⁴²¹ Ibid, 1341-2.

financial position, and even more difficult to understand was why HBOS continued to support the overdraft.”⁴²²

588. In September of 2005, Bancroft resigned as a director of MSG and Mills was appointed as a replacement director.

Magenta and Holligan

589. In May of 2005, FTR changed its name to Magenta Studios Ltd (‘Magenta’). Blackburn was not happy with this development, as FTR were producing clothing as well as ties and were using the MSG logo and colours. She considered them to be in direct competition with MSG and could not understand how Scourfield could allow this to happen, given that the Bank was funding both companies. She raised her concerns with Mills, who was “*dismissive*”.

590. Warehouse facilities were moved from Cwmbran to Simon Jay’s facility in Hinckley. Administration had moved from Battersea to 71, Gloucester Place London W1 in 2004. Levitt found the latter move “*staggering*”, bearing in mind the company was supposed to be trimming its costs⁴²³. Porter understood that the rent for Gloucester Place was paid for entirely by Magenta, although QCS and Mills had offices in the building.

591. Burges Salmon Magenta client accounts confirm that Magenta paid the (high) rent on the building. An e-mail from Burges Salmon to Bancroft of June 2005 states: “*I understand that the lease of the first floor is now to be completed in the name of FTR but that this will be occupied by David Mills and Quayside.*”⁴²⁴ **40/1/3030**

592. A document prepared in anticipation of the sale of Quayside notes that Quayside, “*occupies premises at 71 Gloucester Place, London. It has not entered into any form of lease but occupies the premises under an informal licence issued to it by*

⁴²² Ibid, st.p.1345.

⁴²³ Levitt, st.p.2136.

⁴²⁴ Quoted in Mesher’s Burges Salmon report, ex.p.136311.

the tenant, Magenta Studios Limited. Magenta...is a company unrelated to the group but which is also controlled by David Mills."⁴²⁵ 26/3/2409

593. The rent for the Portman Square flat was also paid by Magenta. An e-mail within the Burges Salmon files from Bancroft's daughter, Lindsay, reads: "*In order to save cost of hotel bills, it has been decided that we should rent a residential apartment property. This is a 2 bedroomed property in Portman Square...we have agreed to pay £625 a month which we will pay quarterly in advance...*"⁴²⁶ 40/1/3029

594. Bancroft contacted an executive search agency to recruit a managing director for Magenta. The consultant at the agency, Lorne Smith, recommended Terrence Holligan, although he warned Holligan to be careful with Bancroft.

595. Holligan first met Bancroft for an interview in May of 2005 at the QCS offices at Gloucester Place. Bancroft ("*bloodshot eyes*", "*very nervous*" "*shaking hands*") offered him the position and a salary of £100,000 within ten minutes. He had asked some perfunctory questions, including if he was experienced in writing business plans. Holligan was surprised about the speed of the offer and the lack of opportunity for the usual due diligence on both sides⁴²⁷.

596. Bancroft told Holligan that Magenta was owned and managed by HBOS, but that "*only the people on the board knew that*" and that QCS controlled Magenta and had removed the directors. At a subsequent meeting, Mills appeared and said that he owned QCS; that HBOS were the main provider of their work and they were a very secure company. Mills also said that HBOS were his shareholders and had key directors on the board of QCS. Bancroft added that QCS would pay Holligan's tax, meaning a salary of £100,000 net.

597. Holligan accepted the position and began work in June of 2005. Bancroft told Holligan not to worry about a hotel, as QCS owned a flat in Portman Square that he

⁴²⁵ ex.p.117312.

⁴²⁶ Ibid. ex.p.136310.

⁴²⁷ Holligan, st.p.844.

could use. Bancroft told him that he and Tony Cartwright used the flat and that Mills and Scourfield occasionally did so at weekends.

598. On Holligan's first day at Gloucester Place, Bancroft arrived late, looking "*an absolute mess*", eyes bloodshot and unshaven. Holligan said that if he was not well, the introductions could be made the following day. Bancroft "*exploded into a rage*" and said, "*don't you fucking talk to me like that again, you come in here the first day*", "*don't you tell me I'm not well.*" One of the designers told Holligan: "*You guys don't last very long you know*". Later, over lunch at Hardy's⁴²⁸, Holligan met Tony Cartwright who was the Finance Director⁴²⁹.

599. The next day, Holligan met Scourfield who asked how quickly he could prepare a business plan to enable HBOS to continue its support. Scourfield talked of other textile companies that were to be brought under the QCS umbrella, each of which would require a business plan and said that he had authorised substantial bonus payments from those companies for Holligan if the plans were acceptable to the Bank. Simon Jay was one of the companies and Bancroft told Holligan he could take over full responsibility for it with immediate effect.

600. During his early days at Magenta, Holligan heard Bancroft telling Cartwright that he was about to purchase a bathroom suite and furniture, that his credit card may run out of credit and that he would have to use Cartwright's. Holligan realised Bancroft was referring to his company card as Cartwright told Holligan that his Magenta card would arrive soon and that Bancroft could use it if necessary. Holligan went on to meet Bancroft at various stores to make payment on his company card, including furniture from Selfridges for about £13,500 and curtains and beds from M&S⁴³⁰.

⁴²⁸ Restaurant on Dover Street where Bancroft spent much of his time and a considerable amount of FTR company money, see below.

⁴²⁹ Holligan, st.p.847.

⁴³⁰ The investigation has been unable to locate statements relating to Holligan's Magenta card.

601. Holligan checked the Magenta credit card statements for Bancroft, Cartwright and Mills and noted what appeared to be excessive spending on personal items by all three men.

602. During a telephone call during Holligan's second week at Magenta, Mills told him that he wanted him to be "optimistic" and have some "blue sky thinking" about the business plan, because "they had big plans for the company". Holligan was concerned that Mills was becoming impatient.

603. At a Hardy's lunch at the end of July of 2005, Bancroft tried to pressure Holligan into using optimistic sales figures in the business plan. When Holligan explained that he could only include sales volume targets in line with the feedback from buyers, Bancroft became agitated, got up from the table and told Cartwright that "we will put in whatever we like" before walking off.

604. A few days later, Holligan received a letter from Bancroft on the subject, which acknowledged that the intention was to double Holligan's figures **20/2/2096**:

*"Please ensure it is and must be an aspirational blue sky thinking plan. David, Lynden and myself are keen to impress upon the bank that we have employed an expert such as yourself, that has all the contacts and knowledge to really make things happen we don't want the bank to hold back funding they must be impressed by the business plans always. I understand you have expressed concerns that we are to increase and double your sales volumes for your 3 year plan leave that decision to me. That is a decision we the main board will ultimately take and does not in any way concern you at this moment, so leave the final figures that will be presented to the bank to me and Tony Cartwright. Rest assured that David Myself Lynden and Tony know and understand what the bank need to see to release the new funds for Magenta."*⁴³¹

⁴³¹ ex.p.61508.

605. Cartwright gave Holligan a copy of an email dated the 31st of August 2005 and sent by Mills to Bancroft, which stated the following **20/6/3027**⁴³²:

*"We need to see an aspirational 3-year plan for the business showing where we could get to if all things went well and we were successful in both organic growth and indeed perhaps with a small acquisition...I would stress that the numbers should purely be extremely high level numbers and should be a utopian view of where we are taking the company."*⁴³³

606. Holligan was concerned about Bancroft's behaviour. His temper tantrums continued and he unsettled the Magenta team. He raised the issues with Cartwright and Mills. Both tried to reassure him, as did Scourfield who told Holligan that Bancroft was history, but that they had to get him out properly as he wasn't well⁴³⁴.

607. Holligan, *"started to have real concerns as to what [he] had got [himself] into and [he] felt that [he] could not have a working relationship with Bancroft."* Holligan held off recruiting individuals to Magenta as he felt he *"would be putting their livelihoods at risk"*. He discovered that a buyer from M&S had closed the trading account with Magenta because of Bancroft's involvement⁴³⁵. **20/3/2097**

608. It was during August of 2005 that Holligan was tasked by Cartwright with delivering cash to the Portman Square flat.⁴³⁶

609. Despite his concerns over Bancroft and the pressure to inflate the figures, Holligan compiled what he thought was a *"practical and achievable"* business plan for Magenta, which he considered offered a *"realistic chance of turning [the]*

⁴³² XP61515 has been omitted in error from the latest version of the JB; this is being corrected

⁴³³ ex.p.61515.

⁴³⁴ Holligan wrote two letters to Mills on the subject of Bancroft, in August 2005 (ex.p.61512) and in September 2005 (ex.p.61520).

⁴³⁵ Bancroft had apparently written the buyer an aggressive letter in response and Holligan was forced to apologise, see ex.p.61510.

⁴³⁶ See cash in envelopes and sexual entertainment section, above.

company into a profitable trading entity". He heard nothing from Bancroft or Scourfield.

610. A few days later, Cartwright said that he had spoken to Mills, Bancroft and Scourfield and that the idea was to impress the Bank with the figures. Cartwright told him to look at the plan again, to forget what was achievable and what was not and to think of the plan as a wish list for the company and not to worry about the cash flow and achieving the targets. Holligan did not amend his plan.

611. In September, Mills telephoned Holligan to say that Scourfield wanted to go shopping for his wife and for Bancroft's 60th birthday present. Mills told Holligan to pay for Scourfield's purchases on his Magenta card and to put them through as expenses.

612. Scourfield and Holligan visited Selfridges, Scourfield asking what the limit was on Holligan's card. Holligan was shocked and said "*I don't know, you authorised it.*" Scourfield bought a Rolex watch for approximately £5,000, a Cartier watch for his wife for approximately £2,800 and a Rolex for Bancroft for approximately £2,300, all on Holligan's Magenta card. Holligan knew this was "*completely wrong*".

613. Millie Bancroft told Holligan in October of 2005 that her father had instructed her not to give Holligan access to the Magenta credit card statements. Holligan recalls that he handed Bancroft his credit card when he left Magenta.

614. Holligan pressed Cartwright as to whether his business plan had been approved. Cartwright told him that it had, that funds were rolling and that he should stop whinging.

615. The next day, Cartwright put an envelope on Holligan's desk. Inside, Holligan found a business plan with a Post-It note attached **20/9/2106-7** which read "*Don't*

tell David and Michael that I have given this to you, Tony.” Although the layout and most of the content was the same as Holligan’s plan, the sales forecast figures had been doubled and the names on the plan were Bancroft and Cartwright. In addition, QCS fees were included at £267,000 per annum. £195,000 for management, £37,000 for rent and £35,000 for costs. These QCS costs had not formed part of Holligan’s plan⁴³⁷.

616. Holligan told Cartwright that the figures were unachievable. Cartwright responded:

“Where do you think the money comes from? Don’t worry about the numbers, nobody is. Has anybody rung you up and said what are the sales this month? What are you doing? You know, nobody is really interested Terry. You’re the only one rocking the boat. Don’t worry about the figures. Lynden has put the business plan into the Bank, that business plan on your desk and the Bank has approved the additional overdraft.”⁴³⁸

617. Holligan learnt from Cartwright that the ‘*additional overdraft*’ was £20 million, whereas Holligan had envisaged an overdraft of only £6 million. He was very concerned by this: *“by now increasing the overdraft...and putting in false projected sales figures it would be impossible ever to make Magenta...profitable within a few years...”*

618. Cartwright said to Holligan: *“why don’t you just keep your head down, you’re not short of money. Everybody is happy, just relax.”* He also said that if Holligan continued to worry, the whole project may be over for him. Cartwright went on to say, *“You know what is happening here. You know you are not going to put this company right. You know that’s not your business, that’s down to Lynden and David.”* Holligan felt that Cartwright was spelling out to him that his business plan

⁴³⁷ Altered plan at ex.p.61521.

⁴³⁸ Holligan, st.p.859.

was not important, that QCS had no intention of repaying the money to the Bank and that he should fall in line.

619. At a subsequent meeting at the Hyatt Hotel on Portman Square, Scourfield told Holligan not to worry about the overdraft and to focus on keeping the business “*ticking over*”. In an earlier telephone call, Scourfield had told Holligan that there was a “*bigger picture*” and that all that was needed was “*for the Bank to release the money into the company and the job had been done*”.

620. Bancroft had not been invited to the Hyatt meeting⁴³⁹, but arrived and refused to leave. He became “*very aggressive*” and was shouting that Holligan couldn’t be trusted. Mills and Scourfield ordered Bancroft to leave and the three went to a separate part of the restaurant to have a “*heated debate*”.

621. Holligan queried the £195,000 QCS management charge in the amended business plan. Cartwright told him it was for David Mills as he had got the work from the Bank. Holligan’s suspicions were crystallised. It would not be acceptable for QCS to bill Magenta whilst it was in such financial difficulties if they owned the company.

622. At a meeting on the 12th of October 2005, Holligan told Bancroft, Mills, Scourfield and Cartwright that he was not happy with what was going on, particularly in relation to the inflated figures and spending on company credit cards. He said that if he was to remain in charge of Magenta, he needed all of their cards so that he could see where the money was going. The four sat in silence⁴⁴⁰.

⁴³⁹ Scourfield had again said that Bancroft was not well and that he was the past.

⁴⁴⁰ Neal and Martin from Simon Jay were also in attendance.

623. The following day, Alison Mills telephoned Holligan to tell him that he would no longer attend a QCS presentation to Barclay's Bank at which Scourfield was to be a guest speaker.

624. Holligan was dismissed from Magenta by letter from Bancroft as he was, "*unsupportive*" of what they were doing.

Levy and administration

625. Bancroft recruited Christina Levy as Design and sales Director of Magenta in November of 2005. Bancroft told her that Magenta was the textile division of a huge organisation called QCS⁴⁴¹. He painted a picture of an enormous business with lots of cash.

626. Levy, like Holligan and Porter before her, was surprised by her appointment process. Bancroft offered her the job without taking up references, on £60,000 per annum plus a 2% bonus on all sales. Normally a bonus would be payable only on the profit. A team was very quickly recruited, with Bancroft employing the first person they interviewed and not being concerned about references.

627. In the same way as Holligan, she was encouraged to develop an aspirational business plan. It was made clear to her that she should show a £2m turnover. When she submitted her plan, Cartwright told her that the targets were low and to increase them. When she queried the viability of this, Cartwright told her, "*not to worry because they were only numbers and it was just to keep the Bank happy.*"⁴⁴²

⁴⁴¹ Levy adds that sometimes Bancroft would say that it wasn't part of QCS.

⁴⁴² Levy, st.p.928.

- 628.** Bancroft was keen to traduce the reputations of others in Levy's eyes, including Blackburn and Holligan. If the latter's name came up, Bancroft would be "very angry".
- 629.** Levy felt that Magenta didn't have the infrastructure to really trade: no clients, samples or factory. She felt that *"Bancroft wanted a 'shop-window' of a women's wear company. He was more concerned with making the business look possible to the Bank..."*
- 630.** From November of 2006, Bancroft didn't want Levy in his office or near his screens in case she saw something. He told Levy to start looking for new premises for Magenta and for Flip Media, a wholly unrelated entity⁴⁴³.
- 631.** Levy felt, *"as though the whole Magenta business was an act to convince the Bank that there was a future. Cartwright continued to make up imaginative forecasts. After [Scourfield] left, Bancroft and Mills were frantically trying to find another bank to work with."*⁴⁴⁴
- 632.** In April of 2007, aware that the company was in trouble, Levy went to the Magenta offices and found an e-mail from Bancroft to Hawes asking for MSG money to be transferred to himself and Cartwright⁴⁴⁵ **21/35/2240**. She realised that Bancroft was diverting company funds, *"at a time when he had told me there was no money in Magenta and bills were not being paid and I was owed a substantial amount of money [and the] business was not being run appropriately."*⁴⁴⁶

⁴⁴³ See Clothing Proceeds and Remnant sections, below.

⁴⁴⁴ Ibid.

⁴⁴⁵ ex.p.62744; see Clothing Proceeds section, below.

⁴⁴⁶ Levy, st.p.933.

633. The day before the administrators came into Magenta, Bancroft asked one of the employees to look at his computer. When told that all his work was lost, Bancroft said, *“Oh dear, what a shame. I won’t be able to show the Bank anything now.”*⁴⁴⁷ When the administrators arrived, Bancroft threw Levy out of his office and did not want her to speak to them. He was *“very angry”* that she was there. As she stood in the entrance hall, Alison Mills put her finger to her lips warning Levy to *“keep quiet”*.

634. The administrators were unable to recover any monies for the Bank from Magenta or Theros and they were dissolved. The administrators noted that they had asked the directors to explain the circa £4m in transactions with other parties, most of which subsequently ceased trading or were insolvent. They were apparently advised that, *“many of these investments were undertaken upon the instructions of the Bank”*⁴⁴⁸.

635. The Bank eventually wrote off £19.2m⁴⁴⁹.

Proposed acquisitions, Simon Jay and Kangaroo Poo

636. Rather than attempt to stabilise and improve the trading performance of FTR / Magenta and conduct themselves as responsible ‘turnaround’ consultants, Mills and Bancroft embarked on a determined bid to turn the Group into a personal business venture, funded, of course, by Scourfield at HBOS.

637. As summarised above, the existing management of the Group was effectively removed. By April of 2005, the only directors of Theros and FTR / Magenta were

⁴⁴⁷ Levy, st.p.934.

⁴⁴⁸ See KPMG final administrators’ report of April 2008, ex.p.76903.

⁴⁴⁹ Angus, st.p.3064.

Mills and Bancroft themselves. By 2004, the only directors of MSG were Bancroft, Mills and Blackburn. Blackburn resigned in November of 2006.

638. However, despite their managerial dominance, Mills and Bancroft never acquired more than a 21% shareholding in Theros (19% jointly held and 2% held by QCS). FTR / Magenta remained wholly owned by Theros. Theros remained the majority shareholder in MSG, with QCS only achieving 40% ownership. The largest shareholders in Theros continued to be 3i and HBOS with 54% between them.

639. As Mesher notes, *“it is likely that...3i...and HBOS relied on the directors to execute decisions in the interests of the shareholders.”* No doubt the same expectation was held by the various private individual shareholders.

640. Mills and Bancroft paid no regard to the interests of the other shareholders and creditors. Instead, they pursued wholly unrealistic and ultimately futile ‘growth through acquisition’ plans.

641. Two of the companies targeted to be brought within the Group were not only managed by QCS, but were actually owned by Mills (Kangaroo Poo) and by Mills and Bancroft (Simon Jay)⁴⁵⁰.

642. A June 2006 e-mail from Roger Hawes to Scourfield and Bancroft reveals one version of the plan: *“I am attaching a structure diagram with how I think it will now work which would mean Magenta...being acquired by a David controlled vehicle, presumably for £1...it then acquires Simon Jay and Kangaroo Poo (market value in the case of the former and £1 in the case of the latter).”*⁴⁵¹ **26/5/2414**

⁴⁵⁰ The third was Xavia Fashions Ltd, a company unrelated to either Mills or Bancroft.

⁴⁵¹ ex.p.2598.

643. Hawes continued: *“I regard BS as acting for Magenta Limited in relation to its acquisition of both Simon Jay and Kangaroo Poo. The Bank’s lawyers will merely need to be content with the increased facilities and the financial assistance aspects which will need to be whitewashed in the usual way. I am hopeful they will merely need to cast a brief eye over the acquisition documentation which will be handled by us in the first instance.”* **26/5/2414**

644. A KPMG report dated the 1st of March 2007, commissioned by Scourfield and received only a week before he left the Bank, envisaged Magenta acquiring Kangaroo Poo for £1 and Simon Jay for £2.5m⁴⁵². As Mills and Bancroft both owned 30% of Simon Jay, they stood to make £750,000 each on the transaction. Angus: *“Mills and Bancroft would have made a substantial amount of money for no outlay.”*⁴⁵³

645. Fraser Kelly had responsibility for reviewing the merger proposals once Scourfield had left the Bank. Theros / Magenta had an overall exposure of £21m and with Simon Jay and Kangaroo Poo added the total exposure would have been £26.2m. Kelly was *“very concerned and agitated”* about the deal.

646. He held a meeting with Bancroft and asked questions about the financial aspects. He was told there was a need for an additional £7m of funding, which subsequently increased to £9m. This would have taken the Bank’s exposure to circa £35m. Kelly: *“When I challenged...Bancroft as to why there was no meaningful financial information available, he just laughed at me and avoided the issue”*⁴⁵⁴.

⁴⁵² ‘Project Merengue’, ex.p.59902.

⁴⁵³ Angus, st.p.535.

⁴⁵⁴ Kelly, st.p.664.

647. Kelly never got past feeling “*anything but discomfort*” and was never able to consider putting together a credit application for the proposals. In a memorandum to Angus, Scott and McMillan of March 2007 **19/39/2072-4**, Kelly noted that the KPMG report had found that Magenta and Kangaroo Poo had, “*little if any financial controls, do not produce monthly management accounts and were able to produce only limited information around historic results...*” He added: “*This is a shocking indictment of the role of Quayside...which has been involved with the Magenta business since 2003 and KP since at least late 2005.*”⁴⁵⁵

648. Unsurprisingly, Kelly concluded that it was an “*unsupportable proposition*”, that and Magenta, FTR and Kangaroo Poo all went into administration in April of 2007.

Simon Jay

649. The manner in which Simon Jay itself had been acquired by Mills and Bancroft was of dubious legality.

650. Simon Jay Ltd was an established textile company based in Hinckley, Leicestershire and which specialised in knitted underwear. The owner (Simon Warner) was looking to sell the company and was introduced to Mills and Bancroft who, with the existing operations director (Charles Neale) and sales director (Ian Martin), bought Simon Jay on the 30th of April 2004 for £3.55m through a Burges Salmon shelf company which later changed its name to Simon Jay Holdings Ltd (‘SJ Holdings’).

651. Mills, Neale and Martin were all directors and shareholders of SJ Holdings and directors of Simon Jay. Bancroft was a shareholder of SJ Holdings.

⁴⁵⁵ ex.p.60561.

652. Neale and Martin *“fervently believed”*⁴⁵⁶ that Simon Jay was realistically worth only around £2-£2.5m and told Mills and Bancroft that they thought the asking price was *“far too high”*⁴⁵⁷. Their anxiety was dismissed, Mills and Bancroft telling them, *“don’t worry about it, we’ve got the Banks behind us, money’s not a problem, if Simon won’t sell for less than £3.5m we’ll pay him £3.5m, that’s fine. So don’t you guys worry about it we can set up the cash there’s plenty of money don’t worry about it.”*⁴⁵⁸

653. Neale and Martin were clearly overawed by their new business partners. They were told that Bancroft was a, *“hugely successful businessman; that he was on the board of various companies...and very financially sound.”* Neale recalls that, *“they told us stories of how they were directors and shareholders in numerous companies which had given them massive experience in both manufacturing and the financial world.”*⁴⁵⁹

654. Jonathan Cohen of Brett Adams, engaged to carry out due diligence work before the MBO, *“convinced”* Martin and Neale, *“that the profit margin at Simon Jay could sustain the burden of these debts.”*⁴⁶⁰ Neale recalls that they signed a mass of paperwork at Burges Salmon which neither he nor Martin really understood.

655. Mills and Bancroft knew they could afford to be generous: most of the funding came either direct from HBOS or indirectly from HBOS via Clode, which, of course, Mills controlled.

⁴⁵⁶ Neale, st.p.1320.

⁴⁵⁷ Ibid.

⁴⁵⁸ Martin, st.p.1309.

⁴⁵⁹ Neale, st.p.1320.

⁴⁶⁰ Martin, st.p.1310.

656. The arrangements were complex and deliberately so. According to Keith Porter, company secretary of Simon Jay from February of 2006, the four were originally supposed to have personally invested a total of £500,000 into SJ Holdings (Mills and Bancroft £150,000 each, Neale and Martin £100,000 each), paying £1 per share and resulting in a share ownership of Mills and Bancroft 30% each and Neale and Martin 20% each.

657. This capitalisation arrangement was reported on the Companies House Annual Return for 2004⁴⁶¹.

658. The balance of the purchase price of Simon Jay was to be funded by a £2.5m loan from HBOS, a £100,000 loan from Sandstone (possibly also from Clode⁴⁶²) to SJ Holdings and £450,000 of personal loans from Clode to the four directors of Holdings.

659. However, the total amount actually invested by the four individuals in SJ Holdings was only £200,000 (Mills and Bancroft £60,000 each and Neale and Martin £40,000 each). The £300,000 shortfall was made up by further loans to the four from Clode. In total, the four borrowed £750,000 from Clode (£850,000 including the Sandstone amount) but, in fact, only loaned £450,000 of that sum to Holdings. This shortfall in funding and consequent undercapitalisation was significant.

660. The transaction passed through a Burges Salmon client account evidently set up for the buy-out, named '*Project Lingerie / Simon Jay*'⁴⁶³.

⁴⁶¹ ex.p.68697. See also Written Resolutions of the 30th April 2004, signed by Mills, which show the increase in share capital to £500,000 by the issuing of 499,000 additional shares, at ex.p.68678.

⁴⁶² See Mesher Clode report at para.5.124, ex.p.84552.

⁴⁶³ See Mesher Burges Salmon report at para. 5.6 onwards, ex.p.136288.

661. The subsequent loan repayments to Clode were made by QCS. QCS then charged the cost to Simon Jay, disguised as '*management fees*'. In 2006, when it became apparent that these '*management fees*' were in fact being charged to satisfy the loan repayments, Clode granted a new loan direct to Simon Jay of £603,000 (the outstanding balances on the four personal loans) plus administration fee and interest, on the condition that the funds would be used to repay the outstanding balances on the four SJ Holdings directors' loans⁴⁶⁴.

662. Simon Jay therefore obtained a loan to repay the personal debts of the directors of SJ Holdings. This was clearly to the advantage of the SJ Holdings' directors and to the detriment of Simon Jay. It also amounted to unlawful financial assistance.

663. Jonathan Cohen was the accountant and auditor for both Simon Jay and SJ Holdings and Martin recalls it was Cohen who transferred the personal loans to the company⁴⁶⁵. Cohen had gone as far as including the £168,584 of loan repayments as '*consultancy fees*' in the statutory accounts filed at Companies House for year ending April 2005.

664. The payments made on behalf of the four shareholders should have been subject to appropriate taxation. The following year's accounts, prepared by Cohen, dealt with the loan repayments under the heading '*prior year adjustment*' and recognised that they had been "*incorrectly classified*".⁴⁶⁶

⁴⁶⁴ See loan agreement at ex.p.68743, in particular para. 2.2. Also, explanatory e-mail from Nick Davies at ex.p.68718 and Davies, st.p.1299-300.

⁴⁶⁵ Martin, st.p.1313.

⁴⁶⁶ ex.p.68763. See also a letter from Cohen to HMRC of the 1st of February 2008, trying to explain the position, ex.p.68732.

- 665.** Cohen was also the accountant for and auditor of Clode and QCS. He confirmed these arrangements and accepted the complete impropriety of them in his police interview⁴⁶⁷.
- 666.** The repayment of the personal loans exposed the fact that the four directors had not invested the full amount of share capital. Loans were then created from Simon Jay to the four directors: £90,000 each to Mills and Bancroft, £60,000 each to Neale and Martin⁴⁶⁸. The SJ Holdings balance sheet had to be adjusted to show that the directors owed the company £300,000.
- 667.** When Simon Jay entered administration in June of 2008, £471,568 of the loan amount remained outstanding and was written off, to the obvious detriment of Clode and, ultimately, HBOS.
- 668.** Simon Jay received a further £100,000 loan from Clode in March of 2007, which was arranged by Mills to help the company over cash flow difficulties.
- 669.** Scourfield was well aware of the shortfall in funding by Mills, Bancroft and the others. In December of 2006, a credit application for new money had been declined. Kelly received an explanation from the relationship manager in Bristol, Colin Burns: *“There appears to be little evidence in the balance sheet of the original capital invested by the management team at the time of the MBO in 2004 and we cannot escape the fact that the reason there is a shortage of working capital at present is due to funds being extracted by the owners and they must be asked to replace sufficient monies to fund their working capital needs.”*⁴⁶⁹ **19/39/2073**

⁴⁶⁷ Tr.p.1563-4.

⁴⁶⁸ ex.p.68736.

⁴⁶⁹ Kelly, st.p.668 and referenced in Kelly’s memo of the 30th of March 2007, ex.p.60562.

670. Burns told Kelly that he had made Scourfield aware of the decision to decline funding. Despite this, in February of 2007, Scourfield issued a letter of credit in favour of Simon Jay for \$318,865 against the Magenta account because the Bank would not authorise further funding. This wholly improper device mirrors the diversion of MSG funds to prop up Kangaroo Poo (see below). Scourfield was determined to keep the companies afloat to enable Mills and Bancroft to complete the deal and make their money.

671. The administrators of Simon Jay and SJ Holdings identified the £300,000 funding shortfall and pursued all four directors for the money. Roger Hawes suggested, on behalf of Mills, that the identified deficit was due to a '*typographical error*', a contention rejected by the administrators⁴⁷⁰. It was then suggested that the amount be set-off against monies owed to Mills' company Sandstone, an idea dismissed by the administrators as Mills and Sandstone were not the same entity.

672. Invoices have been found amongst the Brett Adams files from Quayside to Simon Jay in the sum of £95,492 and for the period leading up to the MBO. They relate to the costs being incurred in relation to the acquisition, including amounts to Burges Salmon and Brett Adams.

673. This was wholly improper. The costs associated with acquiring the business should, of course, have been borne by the prospective purchasers (i.e. Mills, Bancroft et al.) not by the company being bought. Mesher: "*I would expect Brett Adams to be aware of this and...[to] have been alert to this discrepancy.*"⁴⁷¹

⁴⁷⁰ See statement of Mark Ford of Smith and Williamson for the reasons and for a full history of his attempts to recover the money from the four shareholders. Neale and Martin reached a settlement of £15k each. St.p.1333.

⁴⁷¹ Mesher, Brett Adams report, para.4.83, ex.p.129923.

674. The Brett Adams records also show that Quayside incurred substantial costs in relation to the acquisition of Simon Jay. Given that the four directors acquired the shares in Simon Jay personally, it is far from clear why this would be the case. Some of this expenditure may have been re-charged to Simon Jay, resulting in the invoices discussed above, although the amounts differ.

675. One invoice to Quayside, dated the 4th of May 2004, was from Mills' sole trader entity, Richard Paffard Consultancy **26/8/2420**. It reads, "*Fee for completion of Simon Jay deal including costs*" and is for the sum of £50,000 plus VAT⁴⁷². It was sent to Brett Adams' Manchester Square address and is annotated by hand, no doubt by Cohen, with the number of the Quayside cheque that settled the bill⁴⁷³. Mesher: "*This would indicate that Mills charged Quayside £50,000 for his costs in relation to his personal acquisition of the shares in Simon Jay.*"⁴⁷⁴

676. The fortunes of Simon Jay declined during the involvement of Mills and Bancroft. A mooted collaboration with FTR failed. Magenta began to use Simon Jay's Hinckley warehouse, which may explain some of the payments to the firm from Magenta. In 2007, the company suffered a downturn in trading and it entered administration in 2008. Martin blames the initial purchase price being too high for the company's inability to keep trading. The level of debt was unserviceable.

677. Following the MBO, between June and October 2004, Quayside invoiced Simon Jay for just under £91,000 for management fees and the provision of Steven Wiltshire as a consultant. On Mills' personal tax file, there is a contract between him and Simon Jay which states that Mills is entitled to £25,000 per annum.

⁴⁷² Ex.p.132467.

⁴⁷³ One can trace the payment leaving the Quayside account at ex.p.14141 and reaching Mills' Richard Paffard account at ex.p.10887.

⁴⁷⁴ Mesher, Brett Adams report, paras.4.85 and 4.86, ex.p.129924. See also the diagrammatic representation of these arrangements.

678. Neale thought that Mills and Bancroft received about £25K per annum each for their role in the company, which Martin describes as “*financial advice and some checking of accounts.*” Over £103k worth of receipts have been identified from Simon Jay into Mills’ sole trader account. Quayside received over £615k from Simon Jay. Bancroft’s personal accounts received over £102k from Simon Jay. In addition, his off-shore Crown account received over £26k direct from Simon Jay. Cartwright received £3,468 from the company.

679. As noted above, the proposed acquisition of Simon Jay by Magenta stood to make Mills and Bancroft £750,000 each, based on their ownership.

680. Mesher finds it “unusual” that Cohen did not find the individual issues and the overall picture to be “*suspicious*”. He “*would have expected [him] to consider making an SAR*”.⁴⁷⁵

681. In his police interview, Cohen agreed that the manner in which Simon Jay had been purchased amounted to unlawful financial assistance, but said that it was not reported to the DTI.⁴⁷⁶

Kangaroo Poo

682. Kangaroo Poo Ltd was a Devon-based surf wear clothing brand which entered administration in November of 2005 with HBOS debts. In December of 2005, it was bought from the administrators for £1.464m by Mills’ Sandstone Organisation using a Burges Salmon shelf company as a holding company. The shelf company was later re-named Kangaroo Poo UK Ltd. Bancroft was made managing director.

⁴⁷⁵ Mesher, Brett Adams report, para.4.105, ex.p.129930. Mesher draws together the suspect aspects of the Simon Jay transactions at para.4.103.

⁴⁷⁶ Tr.p.1558.

683. Keith Porter had been asked by Bancroft to have a look at the company prior to the acquisition. He was concerned. *“I could not see how this company was going to achieve sales by selling via small independent retail outlets and I questioned why [QCS] wanted to take this on. I could see that the interest payments that would be charged...would effectively kill the business.”*⁴⁷⁷

684. However, Mills not only bought Kangaroo Poo but, as in the case of Simon Jay, did so at a marked over-value. The Kangaroo Poo administrators report is blunt **22/9/2281-9**: *“The company had been marketed for a number of months...with no offers received. The eventual purchaser was introduced by the Bank, and was persuaded to pay a purchase price which far exceeded our valuation...”*⁴⁷⁸

685. The reason for the apparent generosity of the offer from Mills / Sandstone was that HBOS were providing the entire funding for the acquisition⁴⁷⁹. In addition, the Bank offered the new company an overdraft of £200,000 and an additional £300,000 on letters of credit⁴⁸⁰.

686. Porter was appointed as a director and the company secretary. He notes that at the time Kangaroo Poo went into administration, the major accounts had been lost, sales had dropped and there were very low forward orders. *“It would be difficult to envisage why anyone would consider paying a premium to acquire a business in that condition and would be more likely to want a discount as an incentive for taking on the business.”*⁴⁸¹

⁴⁷⁷ Porter, st.p.1351.

⁴⁷⁸ ex.p.141976.

⁴⁷⁹ The facility letter for the acquisition is at ex.p.142154.

⁴⁸⁰ The multi-optin facility letter is at ex.p.142180.

⁴⁸¹ Porter, st.p.2920.

687. Christina Levy of Magenta was also made a director of Kangaroo Poo and thought (no doubt because Bancroft had misinformed her) that Magenta had acquired the company. *“I was concerned that no real due diligence was done before taking the business over...As a result, apparently the business was sold for far more than it was actually worth.”*⁴⁸²

688. The Kangaroo Poo operation was moved from Devon to the Simon Jay warehouse in Hinckley. Porter had concluded that changing location would cost around £50,000 per annum more⁴⁸³. However, *“it was determined by Michael Bancroft and David Mills that the move would go ahead.”*⁴⁸⁴

689. In January of 2007, Kangaroo Poo received a transfer of £200,000 from the Burges Salmon Clothing Proceeds client account. This money was the property of MSG / Clothing Proceeds, which was a wholly separate corporate entity⁴⁸⁵. No doubt, the money was taken to prop up Kangaroo Poo whilst efforts were made by Mills and Bancroft to further their acquisition plans.

690. Despite the fact that Mills had acquired the company via his company Sandstone, his company QCS charged Kangaroo Poo for consultancy services.

691. The Bank’s files contain monthly invoices from QCS at Gloucester Place to Michael Bancroft of Kangaroo Poo at Gloucester Place⁴⁸⁶. **26/11/2423-37** This somewhat incestuous arrangement endured between February 2006 and March 2007. Each invoice was for £6,000 plus disbursements and VAT. The total billed for

⁴⁸² Levy, st.p.928.

⁴⁸³ ex.p.142207.

⁴⁸⁴ Porter, st.p.2921.

⁴⁸⁵ See Clothing Proceeds section, below.

⁴⁸⁶ Invoices at ex.p.52690-705.

the fifteen months was £108,990. Over £21k was received by QCS from Kangaroo Poo⁴⁸⁷.

692. A QCS aged debt list, provided by Mills to HBOS following Scourfield's departure from the Bank, listed £87,406 in unpaid invoices for the period May 2006 and March 2007 for, "*fees for executive directors provided to run the business under instruction from Lynden Scourfield.*" The document said that Scourfield and Burnett had agreed to settle the invoices after the completion of the textile amalgamation deal⁴⁸⁸. This deal was never completed.

693. The Bank put Kangaroo Poo UK into the insolvency process in April of 2007. The administrators realised £100,000 through a discounted sale of goodwill and stock, an insignificant amount when compared to the Bank debt. The administration process was unable to achieve any recovery for the Bank⁴⁸⁹ which had no choice but to write off £2.8m⁴⁹⁰.

Trading performance of the Theros Group during QCS / Mills / Bancroft involvement

694. It is, of course, accepted that FTR was a company in difficulty at the time of Quayside's involvement in 2003. However, what is striking is that the Bank debt was in fact 79% higher in June of 2007 compared to October of 2003. The sales figures declined from £7.5m in October 2003 to £1.9m in October 2005⁴⁹¹.

695. Not only did QCS, in the form of Mills, Scourfield and Bancroft, fail to improve the financial position of the company, but that position worsened during the four

⁴⁸⁷ See two payments on the QCS bank statements at ex.p.14228 and 14277. The first corresponds to the two February 2006 invoices and the second to the April 2006 invoice.

⁴⁸⁸ ex.p.2329.

⁴⁸⁹ See KPMG final administrators' report of April 2008, ex.p.76903.

⁴⁹⁰ Angus, st.p.3064.

⁴⁹¹ See Mesher, Theros report, at section 4 for a narrative overview and Appendices 4a-d for a breakdown of the numbers.

years of their management. Also remarkable is the fact that Scourfield allowed the level of Bank debt to increase to such absurd and patently unsustainable levels. By June of 2007, the HBOS overdraft stood at over £20.9m.

696. By the time of administration, there were no funds to distribute to creditors and shareholders, other than to pay employee wages.

697. Mesher: *“The increasing indebtedness during the period of Quayside’s management of the business puts significant doubt on its performance as a turnaround consultant during this period.”*⁴⁹²

698. As previously noted, Holligan and Levy were encouraged to submit ‘aspirational’ business plans. The forecasts and presentations given by QCS were no less unrealistic. Despite the relentless decline in sales and increase in debt, the forecasts showed a significant projected increase in sales for FTR⁴⁹³. What Mills and Bancroft needed to ensure was that the Group could continue to borrow money from the Bank.

MSG, Happyway, Oval and MSG International

699. In 2004, Mills had told Blackburn that she had a viable company in MSG, but that because of the crippling debts of Theros to HBOS any profit MSG made would be eaten up by the parent company repaying the bank debt.

700. Mills suggested that she break MSG away from Theros and its debts. To this end, Mills and Bancroft established a new company called Happyway Limited

⁴⁹² Mesher, Theros report, ex.p.75661.

⁴⁹³ See Mesher, Theros report, at section 5 for a narrative account and Appendix 13 for a summary of the forecasts.

(‘Happyway’) in which Mills’ Sandstone Organisation and Quayside both held shares, together with Blackburn.

701. Blackburn signed the paperwork, but did nothing proactively to change the name and she insisted that it be known as Happyway / MSG for continuity with customers. She considers that, *“there was no material difference between MSG and Happyway / MSG. I traded as before without any noticeable change.”*⁴⁹⁴

702. Blackburn states that Happyway traded for almost two years. Despite this, Blackburn never signed the draft contract that Mills had drawn up. Mills had told her that it would cost her £500,000 to buy herself out of the Theros group. He and Scourfield both told her that that sum represented what MSG owed FTR for trading support in the form of cash advances from HBOS. There was never any suggestion that any money paid would go to Mills, Bancroft or QCS.

703. Her working relationship with Bancroft and QCS became so strained that she moved to separate offices at 57 Gloucester Place. Amongst other things, she had discovered that Bancroft was using the MSG taxi account for his personal travel. He said that he was *“absolutely entitled”* to use cabs.

704. One such bill was for £658, which the taxi company told Blackburn was to pick up Mills from his Chorleywood home, then Scourfield and Bancroft from their addresses and then to take them to rugby at Twickenham and back via various pubs. Blackburn describes this as a *“jolly for the boys and nothing else.”*⁴⁹⁵ Bancroft would take Blackburn out to expensive restaurants and expect MSG to pay the bill.

705. In November of 2005, Blackburn contacted Sir Phillip Green for advice. Sir Phillip rang Scourfield, who told him that the Bank was doing its best for MSG. That same evening, Blackburn received a text from Bancroft which read “you’re dead”.

⁴⁹⁴ Blackburn, st.p.771.

⁴⁹⁵ Blackburn, st.p.765.

This made her sick and scared, as she believed he was capable of carrying out the threat.

706. This wasn't the only occasion on which Bancroft had shown his true colours. On the 10th of December 2004, Bancroft had told Blackburn that she was "*mentally ill*", "*a cow*" and that "*all the staff hated her*". She thought he was going to hit her as he raised his hand to her whilst she sat at her desk. Blackburn's PA, Shirin Van-Lare recalls the confrontation. She thought that Bancroft was so intimidating that she was fearful for Blackburn and has, "*never before or since seen a man behave like that in the workplace.*"⁴⁹⁶

707. Christina Levy recalls that Bancroft "*especially despised*" Blackburn. He "*really hated*" her and "*said that he would be happy only when her business was finished. He was only happy when he was taking money out of her business.*"⁴⁹⁷

708. By 2006, Blackburn was looking to extricate herself and MSG from Mills, Bancroft and QCS. Her first attempt at setting up independently, through investment from an individual called Michael Baker and the creation of Oval (2085) Limited ('Oval'), was a failure, due to Baker's inability to finance his share of the venture.

709. As the sale did not complete, and Oval had been trading for approximately six months as MSG, Bancroft claimed that Oval's trading from the end of March 2006 (known in the rag trade as the 'unders and overs') was in fact owned by MSG. Hawes wrote to Blackburn to pursue the claim **21/28/2193**: ..."*there is a considerable sum of money (in excess of £130,000) in the account of Oval...which has arisen through the trading activities of MSG over the past few months. This is a cash asset of MSG and should now be transferred forthwith to our client account...which we will hold on behalf of MSG.*"⁴⁹⁸

⁴⁹⁶ Van-Lare, st.p.867.

⁴⁹⁷ Levy, st.p.929.

⁴⁹⁸ ex.p.61051. See also e-mail from Hawes to the same effect at ex.p.64616.

710. After taking legal advice, Blackburn agreed to transfer an amount in settlement⁴⁹⁹. Blackburn: *"I understood that this sum would be paid to the BoS as part of the Theros debts [of] which MSG had been a composite part. At no time did I understand or expect this money to be going to anyone other than the BoS."*⁵⁰⁰ In fact, none of this money was to reach either Theros or the Bank (see below). Hawes' assurance that the cash would be held for MSG was worthless.

711. Blackburn went on to establish MSG International Ltd ('MSG International'), which was incorporated on the 12th of September 2006 and of which she was the sole owner. She expected this to represent a final and complete severance from Mills, Bancroft, QCS and HBOS. She agreed to purchase the goodwill and assets (not the shares or liabilities) of MSG for £390,000. £30,000 was to be paid on completion, followed by three monthly payments of £24,166, thirty three payments of £4,166 and a final £150,000 six years after completion⁵⁰¹.

712. Contracts were signed in October of 2006, but the purchase was backdated to the 1st of April 2006. To Blackburn's surprise, part of the agreement stipulated that the initial sum and subsequent instalments were to be paid to a client account of Burges Salmon, QCS' solicitors. That client account was entitled 'Quayside Corporate Services Limited / Clothing Proceeds Limited' and was a sub-account of the main QCS client account.

713. Blackburn resigned as a director of MSG in November of 2006 and her shares in the company were transferred to QCS around the same time (25% of the company, giving QCS 40%). The sale agreement had stipulated her shares be transferred to Theros⁵⁰².

⁴⁹⁹ In fact, a little over £124k was received by MSG from Oval, see below. Cruickshank observes that, because Blackburn went on to complete the purchase through MSG International, and that sale was backdated to 1st April 2006, that the money made during Oval's trading period would have been payable to her new company, MSG International. Cruickshank, st.p.1185.

⁵⁰⁰ Blackburn, st.p.784.

⁵⁰¹ See Bracher, st.p.791 for an overview of the transaction. Sale agreement at ex.p.61054.

⁵⁰² ex.p.61064.

714. In February 2007, Bancroft was reappointed as a director of MSG, and the company changed its name to Clothing Proceeds Ltd on the 27th of February⁵⁰³. In April of 2007, administrators were appointed to both Theros and Magenta and both were dissolved in July of 2008. Clothing Proceeds was not dissolved until March of 2009.

The Burges Salmon Clothing Proceeds client account and Roger Hawes: the theft and laundering of company funds

715. Analysis of the Burges Salmon QCS / Clothing Proceeds Ltd client account shows that it was operated in a highly unconventional manner and that it both received funds from and paid funds to some unexpected parties. What is clear is that a very substantial proportion of the received funds were improperly and fraudulently diverted for the benefit of Mills, Bancroft and Cartwright, either directly or to companies owned by them⁵⁰⁴.

716. The funds in the client account were the property of MSG and its successor company, Clothing Proceeds. Although, following the sale to MSG International, Mills' company QCS owned 40% of the shares in MSG, it was not Mills' money to deal with as he pleased. 52% of the shares in MSG continued to be held by Theros, which in turn had a variety of shareholders, including HBOS, 3i and other, smaller, investors⁵⁰⁵.

717. Roger Hawes of Burges Salmon was instrumental in the process of diverting the money from the client account held by his firm. The police search of Cartwright's address revealed a copy of an e-mail from Hawes to Mills, Bancroft and Cartwright dated the 17th of August 2007. Hawes attached a schedule **26/18/2462-64**, showing payments into and out of the Burgess Salmon QCS / Clothing Proceeds

⁵⁰³ As per the sale agreement, although this should have happened on completion. The agreement also stipulated that Theros and QCS would not trade in competition with MSG International.

⁵⁰⁴ The Burges Salmon ledger for the QCS / Clothing Proceeds client account (27721.11) is at ex.p.87960-7. Mesher summarises the transactions on the account in his Burges Salmon report at ex.p.136259.

⁵⁰⁵ For the detail of ownership, see the group structure diagram at Appendix 3i of Mesher's Theros report, ex.p.75684.

client account, including, *“the most receipt [should be ‘recent’] from Gill [Blackburn]”*. Hawes wrote, *“I’ll have a word with David...as to an appropriate use of these net funds.”*⁵⁰⁶

718. There ought to have been absolutely no difficulty in determining the appropriate use of the funds held in the client account. MSG did not have significant debts to HBOS, but it did owe around £1.5 million to Magenta as an inter-company debt. Magenta owed around £16 million to HBOS by the time of the sale of MSG to MSG International in October of 2006.

719. Hawes had acknowledged the restrictions on the use of the funds in an e-mail of the 13th of April 2007 sent to Mills, Bancroft and Cartwright. He said that the existing shareholding and debentures in favour of the Bank and Theros, *“makes it difficult to disperse any of the cash unless there is a watertight legal reason to do so. As you know, I would not wish to be difficult but this is a rather unavoidable constraint!”*⁵⁰⁷ **24/4/2362** Hawes was able overcome his initial reticence.

720. The intention behind the sale had always been to provide MSG with sufficient funds to repay an element of its inter-company debt to Magenta, enabling Magenta in turn to re-pay some of its debt to the Bank.

721. As early as January of 2006, Burges Salmon had written to 3i, a shareholder in Theros, in the following terms **24/5/2363-4**:

...“the directors [of Theros] have come to the conclusion that the value of Theros’ assets (being MSG and Magenta Studios) is far surpassed by the debt to the bank which, as at yesterday, was just over £13,465,000. The directors are conscious that the Bank has the right, pursuant to its security, to require the sale of the assets of the group and the directors therefore consider that in the interests of their creditor [the Bank], they should transfer both MSG and Magenta at market value, which sadly will only dent the indebtedness!...It

⁵⁰⁶ ex.p.81613.

⁵⁰⁷ ex.p.106866.

is...appropriate to ask you on behalf of the directors for a formal consent to such transfers at this stage.”⁵⁰⁸

Consent was eventually given by 3i. Magenta was never, in fact, sold, but the clear intention was a sale to reduce the debt to the Bank.

722. During the negotiations over the potential sale of MSG to Oval in the summer of 2006, Hawes twice described it as a “*receivership sale*”⁵⁰⁹. **24/6/2365 and 26/17/2461**

723. Magenta had assigned its interest in the amount owed to it by MSG to HBOS, via a debenture charge over MSG’s assets. As part of the agreement to sell MSG to MSG International, HBOS agreed to a release of MSG’s assets from the charges it held over them. Significantly, the deed of release was signed by Scourfield on behalf of the Bank. There could be no proper reason for Scourfield to have agreed to this, unless he anticipated that Magenta, and subsequently HBOS, would be (at least partly) repaid using the proceeds of the sale.

724. Scourfield had been personally involved in the negotiations to sell MSG, meeting with Blackburn’s accountant Ronald Cruickshank in March of 2006 to discuss details of the possible Oval deal, including the price⁵¹⁰. This was unusual. The directors of MSG would be expected to negotiate with a potential purchaser. Blackburn recalls it was Mills who had insisted that Scourfield be involved.

725. Despite all of the above, no payments were made to either Theros / Magenta or to HBOS from the MSG client account as they should have been. Blackburn’s expectation always was that the sale proceeds would go to Theros and, ultimately, to the Bank.

⁵⁰⁸ ex.p.96305.

⁵⁰⁹ ex.p.81708 and ex.p.94218.

⁵¹⁰ See Cruickshank’s report to Blackburn at ex.p.81678. Cruickshank thought it “strange” that the Theros banker was discussing the purchase. He asked Scourfield if the price was negotiable and Scourfield, “nearly blew a fuse and became quite aggressive...with me.” Cruickshank, st.p.1183.

726. In October 2006, the account received the £30,000 properly due to MSG / Clothing Proceeds from MSG International on completion of the sale, together with a further £110,000 in scheduled instalments from December 2006 to November of 2007. In September 2006, the account also received £124,847 from 'Oval', which Blackburn identifies as the '*unders and overs*' money she had earlier agreed to pay to MSG for the brief trading period of Oval. Mesher notes that these were the two transactions involving MSG that he would expect to have gone through the Burges Salmon account⁵¹¹.

727. In September of 2006, the account had received £134,302 from MSG. There is no correspondence on the Burges Salmon file to explain this payment. The effect was to clear the remaining balance from the MSG bank account. Blackburn cannot account for it and considers it to have been stolen from MSG.

728. There were a number of other receipts, seemingly unrelated to the business of MSG / Clothing Proceeds. Among them was a receipt of £24,294 on the 18th of September 2007, labelled 'walker morris client money'. Walker Morris is a firm of solicitors who acted for HBOS. The following day, a payment was made from the account in the same amount, labelled 'david john mills severance'.

729. On the 14th of February 2008, there was a receipt of £24,378 labelled '*bradman lake ltd directors fees*' and on the 20th of March a further receipt for the same amount labelled '*bradman lake ltd direct dispute*', making £48,756 in total. Both receipts were followed by payments to Mills' personal account for the same amounts labelled 'd j mills' and 'david j mills directors fees' respectively. Hawes signed off the payments to Mills on the client file⁵¹².

730. There was, of course, no connection between the engineering firm Bradman Lake and MSG / Clothing Proceeds, other than Mills' involvement in both companies, and therefore no proper reason why monies relating to Bradman Lake

⁵¹¹ Mesher, Burges Salmon report, ex.p.136254.

⁵¹² ex.p.107216.

should be channelled through the Burges Salmon client account for Clothing Proceeds.

731. There was, however, an improper reason. Bradman Lake had been bought out of administration in October 2007 and Mills subsequently claimed he was owed £48,756 in directors' fees. The financial controller of Bradman Lake, Steve Wiltshire, transferred the amount to Burges Salmon in the two instalments noted above at the request of Roger Hawes⁵¹³.

732. ~~The new owners of Bradman Lake, Langley Holdings, disputed Mills' entitlement to the money and sued him for the return of the sum paid. They had only spotted the payments when conducting an investigation into the fraudulent activities of Wiltshire. Hawes acted on Mills' behalf, pursuing his claim⁵¹⁴. Mills eventually settled the dispute on very unfavourable terms, agreeing to pay Langley Holdings a total of £68,755⁵¹⁵.~~

733. Hawes clearly knew of the provenance of these funds and yet arranged for them to pass through a client account which, on its face, was wholly unrelated. If it had been a legitimate payment there would have been no reason for it not to have been made between Bradman Lake and Mills directly. The Clothing Proceeds account provided a cloak for an illegitimate transaction, disguising the payments as being to a solicitors' firm.

734. On the 16th of February 2007, there was a receipt of £24,551, labelled '*magenta studio buchanan payment*'. Buchanans had conducted an IBR of Remnant Media and had been assured that HBOS would pay their fees. However, Alan Whalley, managing director of Buchanans, was surprised to see that his £24,550.92 bill was settled by way of a cheque drawn on the Magenta Studios account, as he

⁵¹³ ex.p.69196-9.

⁵¹⁴ See Bernard Watson, st.p.1386 for a narrative account of the dispute and his exhibit BAW/2 at ex.p.69194-244.

⁵¹⁵ Consent order dated 6th of May 2010, signed by Roger Hawes on Mills' behalf is at ex.p.69239. Not to be opened at request of KVQC and SB; to be argued in due course if necessary.

was aware that Magenta and Remnant were separate entities. He was handed the cheque when he visited the QCS offices in London and the payment cleared the Magenta account on the 2nd of February.

735. Ten days later, Whalley noticed that a further payment of £24,550.92 had been paid into Buchanan's' account, this time from HBOS. He contacted Bancroft, who advised him to refund the money to Magenta, and to Mills.

736. The next day, Cartwright contacted Whalley and told him to pay the money to a Burges Salmon client account, rather than direct to Magenta. Whalley e-mailed Cartwright to confirm this and copied in Roger Hawes, asking him for the account number **23/10/2331**.⁵¹⁶ This led to the payment recorded on the 16th of February.

737. Firstly, it was wholly improper for Magenta funds to be used to settle Remnant expenditure. This mixing of company money was to be repeated on a far larger scale. Secondly, it is not clear why the re-payment was instructed to be paid into the QCS / Clothing Proceeds client account. Magenta was a separate company from MSG / Clothing Proceeds, albeit operating under the Theros umbrella. Burges Salmon held nineteen client accounts for Magenta. Thirdly, there is no evidence that the re-payment ever reached Magenta. Instead, it formed part of the funds that were gradually dissipated from the Clothing Proceeds account.

738. On the 24th of January 2007, £200,000 was transferred to Kangaroo Poo Ltd⁵¹⁷. This followed an e-mail request from Cartwright to Hawes, headed "MSG": *"The directors of MSG wish to transfer £200,000.00 from the Burges Salmon client account to the current account of Kangaroo Poo Ltd."*⁵¹⁸ **24/8/2367**

739. Kangaroo Poo was a company owned by Mills' Sandstone company and of which Bancroft was a director. There had been a proposed acquisition of Kangaroo

⁵¹⁶ ex.p.64730.

⁵¹⁷ Curiously, Hawes listed this payment in his August 2007 schedule as 'paid to Magenta'.

⁵¹⁸ ex.p.97701.

Poo by Magenta, but this did not take place and Kangaroo Poo went into administration in April 2007. Kangaroo Poo was therefore not related to the Theros Group and there was no proper reason why Kangaroo Poo should be receiving money from the MSG client account⁵¹⁹.

740. On the 12th of February 2007, a £100,000 payment was made, labelled '*osborne clarke completion monies*'. Osborne Clarke was the firm of solicitors acting for the administrators of SMD. SMD was owned by Mills, Bancroft and Simon Robinson. It had entered administration in February 2007. Mills and Bancroft bought its trade and assets and formed a new company called 'Flip Media Ltd' (previously 'Oval (2127)').

741. Within the Burges Salmon files, the police found a letter to the directors of MSG / Clothing Proceeds, dated the 9th of February 2007 and with Hawes' name as the contact. The heading was: "SMD Publishing Limited (In Administration) ("SMD") and the proposed acquisition of the business of SMD by Oval (2127) Limited ("Acquisition"). The letter stated: "*We understand that you would like us to use £100,000 of the monies currently standing to the credit of our client account on your behalf in relation to the Acquisition.*"⁵²⁰ **24/9/2368**

742. Also in the Burges Salmon files were minutes of a directors meeting of Oval (2127) of the 9th of February 2007. Mills and Bancroft ("chairman") were the only attendees. The meeting resolved to purchase SMD from the administrators and noted that Oval, "*would borrow £100,000 from Multi Sourcing Group Limited (which has changed its name to Clothing Proceeds Limited) which would be an on demand loan...*"⁵²¹ **24/9/2369** Hawes' letter had not mentioned a loan.

⁵¹⁹ Mesher (at ex.p.136268) notes that the Kangaroo Poo administrators' report stated that the creditors included Mills, because he had apparently provided a loan of £200,000 to the company which had not been repaid. Whether this was the same £200,000 paid out of the client account is not certain. One of the Magenta Burges Salmon client accounts seems to have been used partly to deal with the administration of Kangaroo Poo.

⁵²⁰ ex.p.137612.

⁵²¹ ex.p.137613.

743. There could be no proper or legitimate reason for Oval 2127/ Flip Media to use money from the MSG / Clothing Proceeds client account in this way. Aside from the common personalities of Mills and Bancroft, there was absolutely no connection between the companies. There is no evidence that Flip Media or Mills or Bancroft ever repaid the money to the MSG client account. Mesher: *"I can see no reason why the MSG account should have been used to fund the purchase of the assets of SMD."*⁵²²

744. The Clothing Proceeds client account did receive £100,000 from Sandstone in October of 2007. The payment was made by transfer from the Sandstone Burges Salmon client account and at the direction of Hawes⁵²³. It might have been thought that this represented a repayment by Mills of the Flip Media 'loan', but analysis of the extant documentation suggests otherwise.

745. On the 1st of April 2008, Hawes e-mailed Bancroft and Cartwright under the heading 'Clothing Proceeds' and in connection with a difficulty in paying their invoices **26/19/2465**. He referred to the £100,000 *"deposit"* from Sandstone, but said that Clothing Proceeds *"never had any beneficial interest"* in respect of it. *"That money is being held on deposit for Sandstone and we should still have £101,840 in our account comprising that sum plus interest."*⁵²⁴

746. Two days later, Mills e-mailed Cartwright, copying in Bancroft and Hawes, **26/20/2466** saying that he had requested Burges Salmon to transfer, *"my £100k plus any accrued interest"* and asking why there was a shortfall in the Clothing Proceeds account. Mills added that he *"had already confirmed that Burges Salmon were holding this money for me."*⁵²⁵ On the 21st of April, Mills sent a further e-mail to Cartwright, again copying in Bancroft and Hawes, stating: *"You will recall that I*

⁵²² Mesher, Burges Salmon report, ex.p.136279.

⁵²³ ex.p.137615.

⁵²⁴ ex.p.81524.

⁵²⁵ ex.p.81525.

lodged £100,000, as a precaution, should the Administrators of Magenta believe the [sic] had a call on the ownership of Flip Media."⁵²⁶ **24/12/2371-2**

747. Mills had presumably worried that, because his company Flip Media had 'borrowed' £100,000 from MSG / Clothing Proceeds, an entity which in turn had a significant intercompany debt to Magenta, the administrators of Magenta might try to make a claim on Flip Media. For this reason, he had lodged £100,000 in the MSG account via his company Sandstone. Once Magenta had been dissolved, and consequently the risk of a claim had evaporated⁵²⁷, he wanted the money returned to him.

748. In the same e-mail, Mills wrote: "...it would [sic] not be correct to assume that if the monies are repaid to Sandstone, then Flip Media is owned by Clothing Proceeds Ltd." This was in reply to an e-mail from Cartwright of the 17th of April **24/12/2371-2**, in which he had made clear to Mills the impropriety of the arrangements and pointed out that as MSG / Clothing Proceeds had funded the acquisition of SMD by Flip Media, then, absent repayment by Sandstone, the ownership of Flip Media may fall to Clothing Proceeds⁵²⁸.

749. In April of 2008, the final payment out of the Clothing Proceeds client account was for £86,465 and to Sandstone⁵²⁹. Mills therefore recovered the majority of the £100,000 he had temporarily lodged in the client account. Mills and Hawes believed the £13,535 shortfall to have been caused by paying Bancroft's and Cartwright's invoices⁵³⁰. It is not known whether Mills subsequently recovered this sum.

⁵²⁶ ex.p.81542.

⁵²⁷ "I am sure we are all pleased to see that the company [Magenta] is now either being or has been dissolved and that's the end of that chapter." Per Mills in e-mail to Cartwright, 21st of April 2008, as above.

⁵²⁸ ex.p.107031-2.

⁵²⁹ The same figure had been quoted by Hawes in his e-mail of the 1st of April, although it seems he included interest.

⁵³⁰ The detail of the Flip Media / SMD transactions is reproduced in graphic form by Mesher in his Burges Salmon report at para.4.106, ex.p.136279 and a diagrammatic summary of the wider transactions involving the client account is at Appendix 5d, ex.p.136362. The net effect of the Flip Media / SMD / Clothing Proceeds / MSG transaction was a loss of £86,465 to the client account.

750. Both Bancroft and Cartwright received very substantial sums from the client account.

751. During the early part of 2007, Mills and Bancroft had been in discussions with HBOS over the future of Theros and Magenta. On the 4th of April 2007, the Bank's solicitor e-mailed Mills and Bancroft, attaching a formal letter notifying them that their offer to acquire the Bank's debt had been rejected and that the Bank was withdrawing the facilities enjoyed by Theros and Magenta. The letter made it clear that the Bank's expectation was that the group would face the insolvency process and that administrators would be appointed and sought assurance that the interests of the Bank and other creditors would be protected⁵³¹.

752. The day before that letter was sent, Mills had e-mailed Hawes. It is suggested that the timing was not a co-incidence. The title of Mills' e-mail was "*Magenta funds*" and stated: "*Just dropping you a line to confirm as requested that Michael Bancroft as the CEO of Magenta Group will be requesting some payments to be made from monies that you are holding on behalf of the Group*".⁵³² **24/14/2375** Hawes replied later that day: "*I have a message that £132,000 is to be tt'd out. Please confirm that id the right number and we'll send tomorrow*".⁵³³ **24/15/2376** Mills was aware that he and Bancroft had a potentially limited amount of time to access the funds before the appointment of administrators.

753. At 12:48 on the 4th of April, a little over three hours after he had received the letter from the Bank's solicitor, Bancroft e-mailed Hawes **24/16/2377**: "*I have had authorisation from David to request the transfer of the following money from the MSG amounts being held by you*." There followed a list of anticipated recipients, amounts and banking details, including Michael Bancroft £50,000, Tony Cartwright £10,000 and Flip Media £54,740. Analysis of the account ledger shows that these payments did not in fact go ahead.

⁵³¹ ex.p.86764-5.

⁵³² ex.p.86766.

⁵³³ ex.p.86767.

- 754.** A copy of this e-mail was found by Christina Levy **21/35/2240**, who saw it on Bancroft's desk when she went into the office on the following Saturday to try to find out what was going on at the company. She took further copies, as she immediately realised that Bancroft was attempting to divert company money to his own account at a time when Bancroft was telling her that Magenta had no money and when bills were going unpaid⁵³⁴.
- 755.** On the 19th of April, Bancroft sent a further e-mail to Hawes, headed "*Clothing Proceeds Ltd*". **24/17/2378** He wrote: "*As I am now a director of the above company I am writing formally to authorise the following payments which I would be glad if you could make as soon as possible. The payments are to be taken from your client account in the name Clothing Proceeds Ltd.*"⁵³⁵ The anticipated recipients were Bancroft himself (£50,000), Cartwright (£20,000) and Burges Salmon (£20,000). Hawes responded that he would "*action the transfers tomorrow*".⁵³⁶
- 756.** On the 20th of April, Bancroft and Cartwright were paid £50,000 and £20,000 respectively from the Clothing Proceeds client account.
- 757.** Bancroft declined to answer questions on this point when given the opportunity in his police interview⁵³⁷.
- 758.** Cartwright told the police that the £20,000 had "*just arrived*" and agreed that it was partly a "*sweetener*". He said that he had paid £10,000 to Mills' brother Peter, who had apparently done some work for the group.
- 759.** Cartwright received further payments of £1,510 in July, £1,935 in September and £2,885 in December 2007⁵³⁸. **24/18/2379**

⁵³⁴ Levy, st.p.933 and ex.p.62744. Copy of same e-mail but from Burges Salmon files at ex.p.86761.

⁵³⁵ ex.p.86758. Mesher queries whether, in fact, Bancroft was officially a director of Clothing Proceeds at that point. See para.4.72 of his Burges Salmon report, at ex.p.136271.

⁵³⁶ ex.p.86758.

⁵³⁷ See, for example, tr.p.525 onwards.

⁵³⁸ The invoice for the latter amount is at ex.p.107024. Bizarrely, it is drawn up as an invoice from Clothing Proceeds to Clothing Proceeds.

760. On the 22nd of February 2008, Bancroft e-mailed Hawes: *“I have agreed with David that this would be a good time to submit my bill to Clothing Proceeds Ltd for work carried out in my role as Consultant and Director from 2003 to the present. My invoice is attached.”* **40/1/3028**

761. The invoice, ‘number 59’ from ‘Michael Bancroft Corporate and Financial Services’, dated the 22nd of February 2008, was in the sum of £41,125 and for ‘consultancy services’ to Blackburn from September 2003 to February 2005 including *“Advising on reorganisation of the Company and its separation from Frank Theake and Roskilly Ltd”*⁵³⁹ **24/19/2380**

762. Blackburn comments on this invoice: *“At no time did I engage Michael Bancroft to advise me and at no time did I ever agree any fees with him.”* She considers this to be a wholly fraudulent invoice, submitted three years after the last purported work and processed through the Burges Salmon client account rather than presented to her or to her company for payment in the normal way⁵⁴⁰.

763. On the 23rd of February 2008, Cartwright e-mailed Bancroft **24/20/2381**: *“I attach my invoice to Clothing Proceeds for work undertaken between October 2004 and December 2006. i [sic] have not previously charged for this so would you please be good enough to check and sign if acceptable and forward to Roger Haws [sic] for payment asap.”*⁵⁴¹

764. The invoice not numbered and from ‘J A C Consulting’, was dated the 21st of February 2008 **24/21/2382** and included, *“Accounting Services...during 2005”* and, *“Liaising with M Bancroft and others re-intercompany matters with Magenta Ltd.”* It

⁵³⁹ ex.p.104217

⁵⁴⁰ Blackburn, st.p.788-9. Blackburn also identifies three QCS invoices to MSG dated the 4th of August 2004, totalling £100,000 and for ‘advice given in company restructuring’. Curiously, they were addressed to Bancroft who, of course, worked for QCS. She believes these to be “completely fictitious” and unjustified. She had not authorised them.

⁵⁴¹ ex.p.104219.

was for 155 hours at £50 per hour, totalling £7,750⁵⁴². Bancroft forwarded it to Hawes on the 24th of February.

765. Much of the work billed for in both invoices was for a period when MSG was still trading. It is therefore not clear why, if the invoices were in any way legitimate, they were not submitted at the proper time. Nor is it clear why the fees could not have been incorporated as part of the earlier payments to Bancroft and Cartwright from the Clothing Proceeds' account.

766. Cartwright had clearly been waiting for the moment to submit his fraudulent bill. In a handwritten note to Hawes accompanying an invoice from Companies House of the 8th of January 2008, exactly a month before the date of his last invoice, he had written, "*Roger, Hopefully it's the last thing to pay from the account before David's 'divi up'?*"⁵⁴³ **24/22/2383**

767. Further, both men had been in receipt of substantial remuneration from Magenta. Bancroft was paid over £86k direct by Magenta from December 2003 to October 2006, plus payments to his credit card of £104,582 from September 2004 to April 2007 and remuneration paid via Quayside. Similarly, Cartwright was paid £123,007 by Magenta from July 2005 to March 2007.

768. On the 29th of February 2008, Bancroft received the further £41,125 and Cartwright a further £7,750.⁵⁴⁴ Hawes signed off both payments on the client file.⁵⁴⁵ The total paid from the client account to Bancroft was £91,125 and to Cartwright £32,571.

⁵⁴² ex.p.104215.

⁵⁴³ ex.p.107241.

⁵⁴⁴ Cheques, ex.p.104213, were sent under a covering letter from Hawes, dated the 29th of February 2008, ex.p.104212.

⁵⁴⁵ ex.p.107207 and 107210.

- 769.** The administrators of Magenta wrote to Bancroft⁵⁴⁶ **23/2/2313** (who, of course, was a director of both Magenta and MSG) on the 17th of August 2007, requesting a breakdown of the inter-company debt between Magenta and MSG (and between Magenta and Remnant, Simon Jay and SMD). This was on the same day as Hawes had sent his schedule of the money in the Clothing Proceeds account to Bancroft, Cartwright and Mills. That document showed that, after HMRC was paid, the balance would be only £39,000. Most of the funds from Oval and from the sale to MSG International had already been improperly transferred and were not available to pay off some of the debt owed to Magenta.
- 770.** The administrators also wrote to Cartwright (company secretary of MSG) on the same day, asking for settlement of the circa £1.9m Magenta debt. **23/3/2324**
- 771.** Bancroft responded on the 31st of August, saying that he was unable to help and suggesting the administrators ask Mills. **23/2/2314**
- 772.** Cartwright responded stating that MSG was no longer trading and that he did not have access to its accounting records **23/4/2325**⁵⁴⁷. The sale agreement had specified that the records should be retained. He made no mention to them of the Burges Salmon client account. Cartwright clearly knew of the existence of that client account (not least because he personally received funds from it and was copied into Hawes' schedule⁵⁴⁸) and of the inter-company debt.
- 773.** As to the latter, he had acknowledged as much in a letter to Christopher Stewart in November of 2006: *"The board of directors are satisfied that the sale of the company's business was in the best interests of the company's creditors. With intragroup debt amounting to some £[18 million] there was never going to be*

⁵⁴⁶ ex.p.81716.

⁵⁴⁷ KPMG's reply is at ex.p.81599.

⁵⁴⁸ And see ex.p.81624.

anything left for shareholders and the directors had regard to the wishes of the largest creditor [HBOS] in deciding on the correct course of action.”⁵⁴⁹

774. The administrators wrote to Mills on the 4th of September in the same terms they had written to Bancroft **23/2/2315**. They received no response. The administrators wrote to both Bancroft and Mills again on the 10th of October **23/2/2317 and 2318**. Mills replied on the 14th of October saying that his role in Magenta was to represent the Bank’s wishes and suggesting they ask the executive directors **23/2/2316**.

775. Bancroft responded on the 15th of November **23/2/2320-3**, attaching a document (dated the 16th of November) which he said had been prepared by Cartwright, but which had been read and approved by Mills and himself. The document made no mention of the Clothing Proceeds account and the funds therein.

776. Magenta’s administrators also wrote to Burges Salmon, *“advising them of our appointment and requesting an appraisal of any relevant issues. We were advised that [you] were holding £138,259 of Magenta’s cash in [your] client account.”* That sum was in a Magenta client account and was transferred to the administrators on the 2nd of May 2007. Despite this, Hawes failed to disclose to the administrators the MSG money held in his firm’s Clothing Proceeds account.

777. Extensive rules govern the operation of solicitors’ client accounts⁵⁵⁰. The usual purpose of such an account is to enable the solicitor to handle funds relating to a transaction to which their client is a party. Hence Mesher’s observation that he would have expected to see the MSG purchase and Oval monies pass through the account.

⁵⁴⁹ Found amongst Cartwright’s papers, on MSG notepaper and from the company secretary (Cartwright), ex.p.81647.

⁵⁵⁰ Set out by Hegarty, st.p.3186.

- 778.** Solicitors are expressly forbidden from operating a banking facility for their clients: ...*“it is not a proper part of a solicitor’s everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account.”*⁵⁵¹
- 779.** Despite this, Hawes permitted substantial sums from different sources (some, for example from ‘Bradman Lake’, clearly from entities wholly unrelated to MSG / Clothing Proceeds) to be kept in the QCS / Clothing Proceeds client account from early September 2006 until January 2007.
- 780.** The majority of the subsequent payments out had no reference to the payments in and were to entities wholly unconnected to the client (for example, ‘Kangaroo Poo’). Over £645,000 passed through the account in a seven month period.
- 781.** Hawes ought to have asked why the client wasn’t paying these sums direct, if they were properly due.
- 782.** Regulatory shortcomings aside, Hawes enabled the improper dispersal of MSG money, which prevented MSG from repaying its creditors, primarily Magenta. He did this knowingly and to assist Mills and Bancroft.
- 783.** Hawes’ closeness to Mills clearly compromised his professional conduct. Mills granted Hawes three powers of attorney covering the period November 2005 to March 2015. They included powers over Sandstone, QCS, Knightingale and David Mills personally and were general powers, without reference to any particular matter, property or transaction.

⁵⁵¹ Ibid. st.p.3187.

784. Hawes was given full power and authority to exercise all rights which were capable of being exercised by the principal, *“in any respect whatsoever and without limitation”* as regards commercial transactions. The documents were signed by David and Alison Mills. They demonstrate the level of trust between Mills and Hawes.

Financial benefit to Mills, Bancroft, Cartwright and QCS

785. Despite the dismal performance of FTR / Magenta and MSG during their involvement, Mills, Bancroft and Cartwright ensured that they were handsomely remunerated. Mesher: *“The level of fees that [QCS] charged, on top of the payments to individual consultants does not correspond to the consultants’ effectiveness at reducing the company’s debts and recovering the Bank’s investment.”*⁵⁵²

786. From March of 2004 to October of 2006 FTR / Magenta made monthly payments of £17,037.50 to QCS. After this, the amounts paid varied slightly each month, but totalled £130,470 from the 31st of October 2006 to the 6th of March 2007. There were some further cheques in most months from June 2005 onwards of around £1,000 to £5,000 each.

787. In addition to this, there were three cheques clearing on the 6th of September 2004, totalling £126,931 which can be matched to a receipt on that day in the QCS account labelled *“Frank Theak”*. There was a payment made by FTR for £80,354 on 26 July 2006 labelled *“C07QCS Corpor...”*, although it has not been possible to trace this payment to a receipt in the QCS bank statements.

788. Including this last payment, the total payment from FTR / Magenta to QCS over a three year period was £1,022,919.

⁵⁵² Mesher, Theros report, ex.p.75661.

- 789.** The administrators' progress report for FTR on the 9th of November 2007 lists a further £18,541 due to QCS on the 10th of April 2007, when the company entered administration. This was not paid.
- 790.** The files provided by HBOS reveal a number of invoices for QCS's work in relation to the Theros Group. The first three invoices were addressed to HBOS rather than to FTR. As Angus makes clear, it would usually be the distressed company that would pay for turnaround consultancy services rather than the Bank.
- 791.** The first invoice, dated the 5th of August of 2003, is described as being for the work of three individuals, Mills (1 day), Bancroft (2 days) and J Cohen (1 day)⁵⁵³. The total is £6,750 before VAT. This would imply a charge of £1,688 per day.
- 792.** The next two are for October and November of 2003, for Bancroft's work, three days per week for each month. They are for £7,500 before VAT and disbursements. No payments to QCS by FTR have been identified during this period, so it is assumed that they were paid directly by the Bank. These three invoices indicated the rate charged and the time engaged, as per normal practice. The other extant invoices, addressed to FTR, do not include this information.
- 793.** The next invoices on the file commence in March 2006 and are for £14,500 per month plus disbursements and VAT, until February 2007, increasing to £17,500 in the final month. The total fee including disbursements and VAT is around £17,300 per month and £20,900 in the final month. In addition to this, there was an invoice for £50,000 in December 2006 for "merger talks", presumably in reference to the proposed acquisition.
- 794.** It is clear from the review of payments to QCS that the invoices found in the HBOS file and listed are not complete. It is not clear why from March 2006 to February 2007 the invoices were for around £17,200 each month in total (the exact

⁵⁵³ Cohen appears to have acted as a consultant to QCS.

amount varying each month depending on the disbursements value), whilst the payments were for exactly £17,037.50 each month, plus a further cheque in most months of £1,000 to £4,000. There may have been additional invoices each month to account for the smaller cheques.

795. The total amount paid to QCS was around £1 million, from March 2004 to March 2007, averaging at around £27,500 per month. This is considerably higher than the total amounts shown on the invoices identified. It is also considerably higher than the £15,000 per month mentioned by Mills in his letter to Mott noted earlier, although this letter discussed the first six months only.

796. Applying the rates indicated in the first few invoices to the total fees paid to QCS by FTR / Magenta over the 37 months from March 2004 to March 2007 would indicate a range of between 14 and 40 days' work per month by QCS individuals.

797. It should be remembered that on top of these fees, Bancroft, Mills and Cartwright were paid personally (or through Richard Paffard Consultancy with respect to Mills).

798. £145K of payments from FTR / Magenta have been matched to receipts into David Mills' Richard Paffard Consultancy account. There was £3,941 due to Richard Paffard Consultancy when FTR entered administration, which was not paid.

799. In his police interview, Mills commented on his involvement in FTR as follows:
"I wouldn't have generally had any day-to-day responsibility of running the business. I would go along and just see the review and the proposals that had been put to me or to the bank."

"Michael Bancroft as I said was an Executive Director, I sat on the board as a Non-Executive Director. Um, I would imagine Tony Cartwright might well have been a Non-Executive-Director or FD there... ...I didn't really have a hands on

sort of day-to-day operation of it, you know, we did look after lots of businesses and that was just one of them."⁵⁵⁴

800. This does not explain why Mills received almost £145K from the company, on top of the £1 million plus received by his company QCS and the payments to the consultants who were involved on a day to day basis, Bancroft and Cartwright.

801. Bancroft stated in his police interview that he was paid by QCS for his work at FTR⁵⁵⁵. This echoes the position he had set out in his memo to Scourfield of October of 2003.⁵⁵⁶ His personal accounts received £416,034 from QCS over the period and his off-shore Crown account £316,391. Invoices demonstrate that much of this income was related to his work at FTR / Magenta / Theros.

802. Despite all of this, over £86k of payments direct from FTR / Magenta have been matched to receipts into Michael Bancroft's bank accounts.

803. Bancroft's two daughters both worked for FTR. £17,564 in payments to them have been identified.⁵⁵⁷

804. As noted earlier, Bancroft spent prolifically on his FTR credit card.⁵⁵⁸ Between March 2004 and October 2007, he spent £119,888. The spending included £47,876 on UK hotels and travel⁵⁵⁹, £38,562 on entertainment, £6,460 on cash withdrawals and £14,539 on miscellaneous expenditure. **26/2/2389-408**

805. Much of the entertainment spending was in very high-end London restaurants such as Le Caprice, Quaglino's, Nobu and Galvin. Some of Bancroft's frequent visits to Hardy's wine bar on Dorset Street and the Royal China restaurant

⁵⁵⁴ tr.p.239.

⁵⁵⁵ tr.p.562.

⁵⁵⁶ ex.p.6430.

⁵⁵⁷ Appendix 11c, ex.p.75712.

⁵⁵⁸ The account statements are at ex.p.84334. An alphabetical list of expenditure is at ex.p.77106.

⁵⁵⁹ Including, for example, Okenden Manor and Spa in Sussex.

on Baker Street are represented. Even were all of this FTR-related corporate hospitality, it is difficult to justify when the company was in such dire financial straits. The miscellaneous expenditure included over £1,500 in a man's clothing shop⁵⁶⁰ and several trips to Selfridges.

806. £12,451 was spent on overseas hotels, travel and expenditure. Despite this, in his prepared statement, Bancroft said, "*I never travelled abroad with or on behalf of QCS or any of the companies they were advising.*"⁵⁶¹

807. Cartwright discussed the FTR credit card in his police interview:

*"I looked at the company credit cards now I think initially Michael may have, I don't know if he's put aeroplane flights or anything so, he might have put the odd restaurant when he wasn't entertaining anybody but David suddenly caught on and David Mills saw every credit card statement so it was from about December / January 2006 through to the end."*⁵⁶²

808. In the light of this assertion, Mesher has split the expenditure to indicate how much of it related to the period from January 2006 to April 2007, assuming that this was when Mills was checking the statements. He notes that there were still a number of flights charged to the card during this period (£4,779), and restaurant expenditure was around £14,000⁵⁶³.

809. £104,582 in payments from the FTR / Magenta bank account has been matched to monthly repayments made for the card, with the balance being paid from unknown sources⁵⁶⁴. No payments from Bancroft's personal bank accounts have been identified in settlement of any of the expenditure. The card expenditure paid by FTR is not shown as a benefit in Bancroft's tax returns.

⁵⁶⁰ Rosselini on Baker Street.

⁵⁶¹ tr.p.681.

⁵⁶² tr.p.1095.

⁵⁶³ Mesher, Theros report, ex.p.75633.

⁵⁶⁴ Appendix 11e, ex.p.75714.

810. Cartwright worked for FTR, preparing management accounts. KPMG state in their report that they were not provided with management accounts for the business and management accounts provided to the Bank have only been identified for the period to April 2006. Despite this, £123,007 of payments to him from the company have been identified from July 2005 to March 2007.

811. In his police interview, Cartwright said that he would charge £300 per day and usually worked for the Theros Group for around two days per week. This would imply charges of £2,600 per month. Over a period of 21 months, charges of around £54,600 could be expected. Almost double this figure was paid to Cartwright. In most months, the payments were more than £2,600, and they generally increased from around the middle of 2006, the period when accounts cease.

Payments to Remnant Media Ltd

812. Around £1.55m of payments have been identified from FTR / Magenta to Remnant Media, none of which were re-paid. This was completely improper, as the only commonality between the two companies was the involvement of Mills and Bancroft.⁵⁶⁵ £250,000 of this amount passed through the Burges Salmon QCS / Simon Jay client account. The Remnant debt was hidden as intercompany debt between MSG and FTR.

⁵⁶⁵ The topic is dealt with fully during discussion of Remnant Media, below.

COUNT 5 – DM, LS, MB:Remnant Media Ltd

- 813.** Remnant Media Ltd ('Remnant') was incorporated in September of 2003 by a former financial journalist Simon Robinson, in order to purchase an adult magazine business called Fantasy Magazines⁵⁶⁶. The acquisition was completed in March of 2004, with some of the required funding provided by HBOS by way of a term loan for £4.5 million.
- 814.** Due to a misunderstanding over the terms of the sale contract, a large anticipated cash inflow was in fact payable to the previous owners and as a result Remnant was immediately in severe financial difficulties.
- 815.** One consequence of this was Remnant's inability to meet the scheduled repayments of the HBOS loan. By around July of 2004, the company was subject to High Risk oversight, although it is clear that the 'good book' manager, Irene Kennedy, maintained close involvement. Kennedy prepared and submitted various credit applications, some of which were sanctioned by Burnett and McMillan⁵⁶⁷.
- 816.** It was made clear to Robinson that the Bank's continued support for Remnant was conditional on the appointment of Quayside as consultants. Quayside's fees were to be £30,000 per month. Chris Langridge, who had been working at Bradman Lake for Quayside, was contacted by Scourfield and asked to help at Remnant which he did for a couple of days a week. His fees were initially in the region of £9,000 per month plus expenses, which he invoiced to Quayside. He notes that he was the only Quayside consultant actively working for the company on a regular basis.
- 817.** Both Langridge and Michael Bancroft were appointed directors of Remnant in November of 2004 and David Mills followed in July of 2005. Additionally, Mills and Bancroft were each 4% shareholders by the time of the Remnant annual return in

⁵⁶⁶ Fantasy became a subsidiary of Remnant and had its own subsidiary called Best.

⁵⁶⁷ See Craig, st.p.1468 and schedule showing Remnant credit sanctioning history CCr3, Tab 59, ex.p.73517.

September 2005⁵⁶⁸. Bancroft had apparently suggested to Robinson that owning a stake in Remnant would give them, *“a greater incentive to ensure we keep the company going.”*⁵⁶⁹

818. Langridge quickly established that Remnant was, *“doomed to failure within the foreseeable future”* because Robinson had paid too much for the business and the income revenues were too small to support the level of debt.⁵⁷⁰ He told Mills of his view⁵⁷¹ and expected Mills to convene a meeting with HBOS so that they could make an informed decision about the future of the company. No such meeting took place.

819. Robinson with the benefit of hindsight has a similarly realistic view of the viability of his company: *“From day one, Remnant was a company in limbo. I expected the BoS to pull the plug when Richard Desmond didn’t pay the outstanding money”*⁵⁷². Gregory Caswell, managing director of Remnant from 2006, states, *“The reality is that Remnant Media was not a viable company.”*⁵⁷³

820. However, it seems clear that Mills and Bancroft, with Scourfield’s blessing, were determined to keep Remnant trading for as long as the company, through HBOS (and other Mills related entities also being funded by the Bank), could pay their fees and be of use to them for other purposes. Competent, diligent and honest consultants and bankers should have been looking for an early exit strategy which minimised further Bank losses. Caswell puts it thus: *“My view, throughout my 7 or 8 months with the company, was that it should have been shut much earlier if the Bank and QCS were making sound business decisions.”*⁵⁷⁴

⁵⁶⁸ Mesher, Remnant report, ex.p.75787.

⁵⁶⁹ Robinson, st.p.814.

⁵⁷⁰ Langridge, st.p.985.

⁵⁷¹ Expressed in an e-mail to Mills, copying in Bancroft, of the 17th of November 2004, CTL/5, ex.p.62934.

⁵⁷² Robinson, st.p.803.

⁵⁷³ Caswell, st.p.892.

⁵⁷⁴ Caswell, st.p.893.

- 821.** Langridge became uneasy in his position. He had been “*astonished*” to see that Mills had described him in a QCS brochure as “*QCS Group Financial Director*”, a role he “*obviously did not hold*”. When he challenged Mills, he was told it was a mistake, a response Langridge found “*ridiculous*”⁵⁷⁵.
- 822.** Langridge decided to leave Remnant, resigning on the 16th of March 2005⁵⁷⁶. He was replaced by Michael Bancroft, who, Langridge noted, was, “*not a turnaround expert*” but was, “*very close to Mills*”. Robinson recalls Bancroft telling him that he knew nothing whatsoever about the media business, but claiming that he, “*did have the ability to keep the BoS off my back*”.
- 823.** The financial position of Remnant did not improve whilst Quayside were involved. In fact, as Mesher notes, “*The overall picture appears to be declining sales and increasing losses from 2004 to 2006...The balance sheet position shows that the solvency of the group was also deteriorating throughout this period, and the overall debt levels were increasing.*”⁵⁷⁷
- 824.** The amount of money demanded by and paid to Quayside and Mills must be considered in light of this. Following Langridge’s departure, Bancroft told Robinson that the Quayside fees would remain at £30,000, but that David Mills was to become involved with Remnant and be paid an additional £1,250 per month as company chairman. Robinson recalls that the fees were subsequently reduced to £10,000.
- 825.** Remnant’s financial statements for year ending December 2004, state that £35,226 had already been paid to Quayside for the consultancy services of Langridge and Bancroft.

⁵⁷⁵ Langridge, st.p.991.

⁵⁷⁶ Anthony Edwards states that “by mid-January [Langridge] was not involved in any day-to-day management”: Edwards, st.p.822. Langridge also ceased to be a director on the 16th of March 2005: Mesher, Remnant report, ex.p.75794.

⁵⁷⁷ Mesher, Remnant report, ex.p.75792.

- 826.** Eight invoices from Quayside to Remnant have been identified for the period November 2005 to June 2006⁵⁷⁸. Each is for a base fee of £10,000 plus disbursement amounts of up to £3,842.91. Three have additional charges of up to £11,971 for ‘*Extra accounting work and services*’ and one a £10,000 charge for ‘*Repayment of a short-term loan*’. No evidence of a loan being provided by Quayside to Remnant can be found⁵⁷⁹. One invoice from Quayside to Remnant for the six month period July to December 2006 has been identified in the sum of £40,851.
- 827.** Mesher notes that consultants would normally charge a daily or hourly rate and that it would be good practice to indicate the rate charged and the number of days to which it has been applied on the invoice. None of the identified Quayside invoices contain this information.
- 828.** Remnant paid £159,388 to Quayside during 2005. In addition, substantial payments were made by other companies to settle some of the Quayside invoices to Remnant.
- 829.** On the 17th of May 2006, a payment of £60,865.95 was made by the Magenta Studios Ltd HBOS account to Quayside⁵⁸⁰. This would appear to be in full settlement of the first four of the eight Quayside invoices to Remnant referred to above.
- 830.** As you are already aware Magenta (formerly ‘FTR’), was itself an HBOS High Risk client managed by Scourfield and for whom Quayside were ‘consulting’. Bancroft and Mills were heavily involved in its operation at this time. However, the two firms were entirely separate corporate and legal entities and there is no lawful reason why Magenta funds should have been used in this way. As you will learn, Magenta money was also to be used to settle other Remnant debts.
- 831.** Money from Clode Retail Finance Ltd, another HBOS High Risk client under Scourfield and Mills control, was used to settle two further Quayside invoices to Remnant, dated the 1st of April 2005 and the 10th of January 2006 and totalling

⁵⁷⁸ See Appendix 10 to Mesher’s Remnant report, ex.p.75859.

⁵⁷⁹ Mesher, Remnant report, para.5.65, ex.p.78524.

⁵⁸⁰ Shown on the Magenta bank statement as a debit to Remnant / Quayside, ex.p.13776.

£71,135⁵⁸¹. These Clode funds were part of a larger 'loan' to Mills' Knightingale Investments (see below). The use of Clode funds in this way was "*inappropriate at best*" according to Remnant's finance director Christopher James⁵⁸².

832. The total of the identified Quayside invoices to Remnant is £264,701. The return of the final Remnant creditors' meeting, dated the 26th of February 2009, indicates that Quayside was owed £139,838. Robinson states that just before the creditors' meeting, an employee of the liquidator told him that the Bank had recently paid outstanding Quayside fees of £50-60,000 and that therefore the Bank was an additional creditor.

833. In December 2005, David Mills was paid £5,460 by Remnant and a further £2,843 in April 2006. Alison Mills' company Wordsters received £2,458 from Remnant in April 2006 apparently for an article about New York.

834. The return of the final Remnant creditors' meeting also indicates that £14,719.79 was owed to Mills' sole trader company Richard Paffard Consultancy and £5,209.94 to Richard Paffard, another Mills company. This would represent around sixteen further months of charges.

835. Remnant therefore incurred charges both from Quayside and from Mills via two further vehicles as well as from DM directly. Mesher finds this "*unusual*" and would have expected all fees and expenses to have been channelled through Quayside⁵⁸³. This, of course, mirrors the position which developed at FTR / Magenta.

836. Whilst they ensured that their fees were paid, it was unclear what Mills and Bancroft did to justify that level of reward. Caswell: "*Very quickly after starting work at Remnant, I realised that QCS were being paid £30K each month for doing very little other than arranging finance.*" He recalls sending an e-mail to the Bank, querying why Quayside was appointed at £30,000 a month, "*when they didn't do anything for*

⁵⁸¹ See CRJ/4, ex.p.62832. The invoices have not been recovered.

⁵⁸² James, st.p.982.

⁵⁸³ Mesher Remnant report, ex.p.78526.

*that money and were rarely on any of the sites.”*⁵⁸⁴ Caswell apparently received “*an enormous bollocking*” from Bancroft for sending the e-mail.

837. Robinson is less charitable: “*In the two and a half years that Michael Bancroft was to be associated with Remnant, he attended our premises only twice and the only advice he gave on these visits was that the toilets needed cleaning.*”⁵⁸⁵

838. What is clear is that the involvement of Mills and Bancroft with Remnant was characterised by poor management decisions, improper use of company funds and on Bancroft’s part his usual management style.

839. Bancroft was keen to ensure that those who questioned his approach were removed. Early in Quayside’s involvement, in November of 2004, Anthony Edwards and Aroon Maharajh⁵⁸⁶, both non-executive directors of Remnant, were summoned to a meeting with Bancroft and Langridge at which they were asked to resign. Bancroft told them that if they did not agree, the Bank would withdraw its funding, the shareholders would lose their equity and that they would be responsible. They were told the decision had to be taken that day.

840. Maharajh negotiated his departure, but Edwards refused to resign as his role was to represent the minority shareholders. Bancroft was furious, but Langridge persuaded him that Edwards might be useful to him.

841. Dhruv Srivastava was the finance manager of Remnant from September 2004 to July 2005. Robinson recalls that Bancroft was angry that Srivastava was asking for additional funds to fulfil a responsible business plan and asked that his services be dispensed with. Srivastava had also reduced the directors’ remuneration because Remnant could not afford to pay the fees and salaries; doubtless this didn’t endear him to Bancroft.

⁵⁸⁴ Caswell, st.p.893.

⁵⁸⁵ Robinson, st.p.801.

⁵⁸⁶ Both now deceased.

842. Robinson states that Srivastava’s replacement, Andrea Harrison, telephoned him before an 18th of December 2005 board meeting and told him that she didn’t want to attend as she would be forced to ask for more money. Robinson persuaded her to be present and she told the meeting that Remnant would need a substantial cash injection from the Bank. Mills “*went absolutely berserk*” and said that the accounts would have to be changed. Harrison was taken to a meeting with Tony Cartwright (who had been appointed early in 2005 to oversee Remnant’s accounts) to discuss how this would be done⁵⁸⁷. Bancroft also removed Harrison from post.

843. It was at this same December meeting that Mills told Robinson to raise more cash to keep Remnant afloat. Robinson replied that he had no more money. Mills said that he could arrange for a loan from Clode, of which he was, as you know, the Chairman. In fact, by this point, Robinson had already begun to borrow money from Clode to finance Remnant.

844. Mesher identifies four loans from Clode to Robinson and his company Parkgreen Communications Ltd between June 2005 and April 2006 totalling £1.457 million⁵⁸⁸. A substantial proportion of these loans were provided to allow Robinson to invest in Remnant shares⁵⁸⁹. By October of 2007, Robinson owed Clode around £1.5 million in capital and interest and Parkgreen a further £202,661. Parkgreen paid over £150,000 to settle the debt, but £49,037 was written off. Robinson was declared bankrupt and as a result of the sale of his house a substantial amount of the debt was cleared.

845. Mills was the director and major shareholder of Clode and a director of Remnant; both of which were ailing businesses. He knew the risk of further adding to Robinson’s debt and the risk of Clode, and, ultimately HBOS, not recovering its money.

⁵⁸⁷ See a letter from Bancroft, seemingly in relation to this, ex.p.61165.

⁵⁸⁸ Mesher Clode report, para.5.169, ex.p.84562 and Appendix 7d, ex.p.84625.

⁵⁸⁹ Robinson also bought Global’s Remnant shares, see Mesher Appendix 7d. Parkgreen held shares in Remnant in addition to Robinson personally: see Mesher, ex.p.75788.

846. Burnett states: *“Had I or the BoS known that Remnant Media’s financial situation was so dire as to require private re-financing by Simon Robinson then I believe we would have taken the opportunity then of putting the company into administration...even if this meant an immediate loss to the Bank.”*⁵⁹⁰

847. In January of 2005, Edwards asked Bancroft for a meeting with Scourfield to discuss the concerns of the minority shareholders. Bancroft told him that this was not necessary as *“QCS controlled Scourfield, telling him what decisions he should be making on behalf of the Bank.”*

848. Bancroft stated that they *“looked after Lynden”* and mentioned that they had ~~taken him and his wife on an “all-expenses paid holiday to the West Indies”.~~⁵⁹¹
⁵⁹²Bancroft had let his guard down and revealed the corrupt relationship between Scourfield, Mills and Bancroft that drove Quayside’s involvement in Remnant and other distressed companies.

~~**849.** Robinson was made aware of Bancroft’s earlier fraudulent behaviour at Ritz by Peter Jay, the solicitor from Beechcrofts acting for Remnant. Robinson in turn told Edwards, who confronted Bancroft about his past. Bancroft was, “furious that his earlier affairs had been disclosed” and told Edwards to forget it. Edwards asked Bancroft if the Bank were aware of the incident, to which Bancroft replied that they were fully aware and that Scourfield was, “in their (QCS’) pocket.”~~⁵⁹³

~~**850.** Jay had a meeting with Bancroft regarding monies owed to Beechcrofts and identified him from the Ritz days. Bancroft was “very hostile” towards Jay, who states: “I could never understand how BoS could put a man like Bancroft into companies on their behalf, given his fraudulent background at Ritz. His activities~~

⁵⁹⁰ Burnett, st.p.1136.

⁵⁹¹ Edwards, st.p.822.

⁵⁹² Not to be opened at request of GBQC pending resolution of hearsay.

⁵⁹³ Ibid, st.p.824.

~~would not have been difficult to trace.”⁵⁹⁴ Jay’s opinion of Bancroft is that he is a “dislikeable man...mean and aggressive”.⁵⁹⁵~~

Transfers of money from FTR / Magenta Studios to Remnant

- 851.** It has already been noted that funds from Magenta Studios Ltd were improperly used to pay Quayside fees invoiced to Remnant. This was but a fraction of the £1.55 million of Magenta money which was diverted from Magenta to benefit Remnant. Christopher James, Remnant finance director from April 2006, compiled a schedule detailing these transfers **28/10/2654** and Mesher has corroborated James’ work and identified some additional payments⁵⁹⁶.
- 852.** There were six direct payments from the Magenta account to Remnant between January and May 2006, totalling £458,000 plus a further payment of £42,000 from FTR labelled Fantasy: a round £½ million.
- 853.** A Burges Salmon client account entitled ‘*Quayside Corporate Services / Simon Jay*’ received £250,000 from Magenta on the 24th of May of 2006. James’ schedule indicates that £250,000 of Magenta money was being, ‘*held in the Burges Salmon account*’ for Remnant from that date. On the 7th of September 2006, a payment for £250,000 was made from the same Burges Salmon client account to Remnant. Robinson “*cannot give any legitimate explanation for the transfer of this money to Burgess Salmon on behalf of Remnant*”.⁵⁹⁷
- 854.** Simon Jay (a knitwear company as you will recall) was unrelated to either Magenta or Remnant, other than that Mills, Bancroft and QCS were involved with all three companies⁵⁹⁸. There was therefore no proper reason for Magenta or Remnant

⁵⁹⁴ Jay, st.p.926.

⁵⁹⁵ Not to be opened; subject to a BC application.

⁵⁹⁶ CRJ/3, ex.p.62828 and Mesher Remnant report, para. 5.20 onwards and Appendix 6a and b.

⁵⁹⁷ Robinson, st.p.814.

⁵⁹⁸ See Theros section, above.

company funds to pass through the Burges Salmon 'QCS / Simon Jay' client account in this way.

855. James also identified payments made by Magenta to a range of creditors of Remnant on their behalf, totalling just over £525K. Mesher has reconciled a sample of these to the Magenta bank statements and has identified a number of further payments from Magenta to what appear to be Remnant suppliers, totalling just over £275K.

856. A total, therefore, of over £1,550,000 which was improperly diverted from FTR / Magenta to keep Remnant afloat and to ensure that Mills and others continued to enrich themselves.

857. No repayments have been identified from Remnant to Magenta for any of these amounts⁵⁹⁹. The transfer of money between unrelated companies in this way was obviously wholly inappropriate. Magenta was suffering cash flow difficulties itself and, from January to June 2006, when most of the above transactions occurred, it had an HBOS overdraft of around £15 million.

858. Alan Whalley of Buchanans conducted an IBR of Remnant. He became aware of the transfer of funds from Magenta to Remnant and recorded it on a summary of Remnant's financial position which he prepared in August 2006 as a £1.4m 'loan' from Magenta Studios under the heading 'other creditors'⁶⁰⁰.

859. Whalley:

"I was a bit surprised at seeing this debt. I thought it odd that QCS would channel funds from one HBOS assignment to fund another, entirely different entity." ... "The Magenta directors had a duty to protect the Magenta creditors and HBOS and I could not see what Magenta business interest was served by

⁵⁹⁹ Magenta was listed as a creditor of Remnant and Fantasy in 2009, but for a total of only £37,651.

⁶⁰⁰ ex.p.65701.

advancing £1.4m to Remnant Media – a company that our review revealed was also in a precarious financial position.”⁶⁰¹

860. Whalley reviewed the KPMG report of February 2007 into possible Magenta acquisitions⁶⁰² and noted that there was no mention of the funds he knew had been transferred from Magenta to Remnant. He would have expected to see this Remnant debt disclosed separately.

861. In fact, he felt that the Remnant debt most likely represented at least some of the large inter-company debt stated to exist between Magenta and MSG and shown in the KPMG report as an *‘investment’* of £2.63m by Magenta in MSG⁶⁰³. He was therefore concerned that the report, *“gave a misleading view of the assets and liabilities of Magenta”*, not least because he was aware that there was little if any chance of the money being recovered from Remnant.

862. Whalley was so concerned that he spoke with Bancroft and warned him that KPMG would require Bancroft to sign a statement that he had properly declared all material information about the financial position of Magenta.

863. He puts it thus: *“This inter-company debt position was in my view an inaccuracy and, if left unresolved, would lead to Bancroft making a false declaration.”... “I was alerting Bancroft to the fact that he would be expected to sign an incorrect declaration which would have significant financial implications for his business.”... “If Bancroft deliberately misleads the investigating accountants, he could thereby mislead HBOS, who would make lending decisions on the premise that the company had provided information about its affairs in good faith.”⁶⁰⁴* Whalley thought Bancroft was *“uncomfortable”* when told this.

⁶⁰¹ Whalley, st.p2718-9.

⁶⁰² ‘Project Merengue’, see Theros section, above.

⁶⁰³ See ex.p.65735-6 for how the report described the Magenta / MSG inter-company debt.

⁶⁰⁴ Whalley, st.p.2720-1.

- 864.** On the 12th of February 2007, Whalley told Mills that he knew that Cartwright had spoken to him, *“about the treatment of the Remnant Media balance in the forecast as an investment in MSG”* and said that he was, *“concerned that KPMG were being misled”*. Mills, to Whalley’s *“dismay”*, was not open to correcting what Whalley viewed as a clear misrepresentation and said that HBOS were fully aware of the position⁶⁰⁵.
- 865.** Cartwright’s account to the police in his interview supports Whalley’s contention. Cartwright said that Remnant was always short of funds, that they were desperate to keep it going and that a loan was made from Magenta to Remnant on the instructions of Scourfield. He thought it grew to about £1.6m.
- 866.** Scourfield was concerned that nothing was to be said about the loan and rebuked Cartwright for mentioning it at a meeting at HBOS in Reading, following him out the building and saying, *“don’t ever say that again...no one knows about Remnant Media and Magenta”* and, *“you must never effing say that to anybody.”* Cartwright was clear that the arrangement was both *“corrupt”* and *“illegal”*.
- 867.** Cartwright told the police that, apart from Scourfield, the Bank knew nothing about the loan or the size of Magenta’s overdraft⁶⁰⁶.
- 868.** Robinson recalls Bancroft and Cartwright talking about cash that was *“held in Magenta by the BoS and that if...Scourfield authorised it, cash could be moved from Magenta to other companies to pay their creditors.”* He was aware that when Remnant asked for cash, there would be a delay of a couple of weeks and then monies would be released from Magenta⁶⁰⁷. Bancroft apparently referred to the Magenta account as *‘the slush fund’*. Caswell recalls: *“I had heard of a company called Magenta, which was a £19 million pot of BoS money which was used to keep Remnant trading.”*⁶⁰⁸

⁶⁰⁵ See Whalley’s file note of his conversation with Mills at ex.p.65774.

⁶⁰⁶ Tr.p.1139-44 and 1224.

⁶⁰⁷ Robinson, st.p.804.

⁶⁰⁸ Caswell, st.p.892.

869. Mesher highlights that the Magenta funding made a significant difference to Remnant⁶⁰⁹.

870. Tom Angus' view is clear. Such transfers would be,
*...“entirely against Bank policy and practice,...it would not be appropriate to use money advanced to Magenta to support an unrelated company such as Remnant. BoS lent money to Magenta to support its trading operations, not to indirectly support those of another company.”*⁶¹⁰

871. The Bank's files on Remnant contain no indication that the transfers were approved by anyone senior to Scourfield.

SMD Publishing Ltd

872. In December of 2005, Robinson, Bancroft and Mills incorporated a company called SMD Publishing Ltd ('SMD')⁶¹¹ to purchase three magazine titles⁶¹² from a company in liquidation called Highbury House.

873. SMD was an entirely separate company to Remnant and Remnant never owned any shares in SMD. Robinson was the sole director and held one share. The other share was held jointly by Mills and Bancroft.

874. Despite this, the purchase of the titles from Highbury House by SMD was financed by a Clode loan to Knightingale which was onward loaned to SMD and Remnant, then partly re-paid by Remnant using the Bank's money.

875. In October of 2006 Richard James made an accounting file note of his understanding of the arrangement⁶¹³. Significantly, the document was, “*based on*

⁶⁰⁹ See graph at para. 5.80 of Mesher's Remnant report, ex.p.75828.

⁶¹⁰ Angus, st.p.526.

⁶¹¹ 'SMD' being their respective initials.

⁶¹² Front, Hot Dog and DVD World.

discussions with David Mills and Simon Robinson.” James wrote: “Clode...has lent SMD...£550,000 secured on the business assets of the company. The main purpose of this loan was to finance the acquisition of the three Highbury House titles but some funds were also paid to Remnant...”⁶¹⁴28/11/2656 James included a schedule, split between ‘SMD items’ and ‘Remnant items’ to reflect how the £550K was divided between the two companies.

876. Under ‘SMD’, the schedule showed that £150,021 was used by SMD to purchase the Highbury House titles. There was a £50,000 ‘arrangement fee’, (which James presumes went to Clode) and a £75,000 ‘success fee’, (which James assumes went to Quayside). £32,221 was paid to Hoodless Brenan (stockbrokers), *“to acquire shares in Remnant from a minority shareholder.”*

877. Under ‘Remnant’, the schedule showed that £71,134.66 of the money was used to pay two Quayside invoices and £171,602.34 was paid to Remnant to pay creditors.

878. James’ note goes on to record that, *“The loan was originally set up to be paid by Remnant as SMD did not have a bank account and has continued to be paid by Remnant...”* Robinson recalls that Mills told him that he, *“intended to raise about £500k and that he intended to award himself a success fee of £160k for doing so. At no time did I ever see the finance agreement for this loan between SMD and Clode.”⁶¹⁵*

879. No loan agreement or other documentation between Clode and either SMD or Remnant has been identified. James recorded, *“despite requests for sight of the loan agreement from David Mills and Nick Davies...this has not been forthcoming.”* 28/11/2657 The Remnant bank account does not show a credit for this amount from Clode.

⁶¹³ CRJ/4, ex.p.62831.

⁶¹⁴ Some of which may have been routed through the Sandstone bank account. Sandstone received £300,000 from Clode on the 26th of July 2006 and Sandstone paid Remnant £300,000 five days later.

⁶¹⁵ Robinson, st.p.3314.

880. The loan was in fact between Clode and Mills' Knightingale Investments. On the 30th of January 2006, Knightingale borrowed £500,000 plus £50,000 arrangement fee from Clode. The agreement was signed by David and Alison Mills. The repayment was to be made by twenty-four instalments of £25,963, commencing in March of 2006.⁶¹⁶

881. Remnant's bank statements show a series of eight payments labelled 'Clode' from April to November of 2006, totalling £233,671⁶¹⁷. All were for £25,963, except that for April which was a double payment to include March. Knightingale's bank statements do not show any such payments to Clode. Remnant was re-paying the loan which had been made to Knightingale to fund the purchase of SMD by DM, MB and Robinson.

882. In January of 2006, the Knightingale account received £850,000 from Clode and appeared to return £500,000 to Clode a few days later. Some of the payments listed on James' SMD loan schedule can be identified debiting the Knightingale account after that date: £32,221 was paid to Hoodless Brennan on the 7th of February and £171,602.34 was paid by cheque to Remnant on the 13th of March⁶¹⁸.

883. Cheques making up the purchase price of the Highbury House titles can also be identified. £25,000 to each of Bancroft and Robinson on the 16th of February and £100,000 to David Mills on the 2nd of March⁶¹⁹. **.28/5/2658-59**

884. In his Remnant balance sheet of August 2006, Whalley showed a total of £527,439 as an inter-company debt from SMD⁶²⁰.

885. James correctly advised that a proportion of the Clode loan should be transferred to SMD and be reflected in SMD's accounts as a liability. There is no

⁶¹⁶ Loan agreement is at ex.p.67865.

⁶¹⁷ See Mesher Remnant report, Appendix 7, ex.p.75856.

⁶¹⁸ Knightingale bank statements at ex.p.143678-80.

⁶¹⁹ Ibid.

⁶²⁰ ex.p.65701.

evidence that this was done and there is no record of any payments being made by SMD to Remnant.

886. SMD followed Remnant into administration in February of 2007, once the funding from Remnant dried up. The list of SMD creditors makes no reference to Remnant or to Clode. Further, a proportion of the Clode loan to Remnant had been used to pay SMD's creditors.

887. Mills and Bancroft subsequently purchased the business and assets of SMD out of administration for £100,000 using money improperly diverted from the Burges Salmon MSG / Clothing Proceeds account⁶²¹. They did so via a shelf company,⁶²² later appropriately re-named 'Flip Media Ltd', which, in turn, they sold in June 2008 for £125,000⁶²³.

888. In a July 2009 e-mail to Steven Davidson at Brett Adams, Mills wrote: *"Flip Media. Justus Ltd was the Beneficial owner of the shares although the company was managed by RPC [Richard Paffard Consulting]. Justus received approx. £60k from the sale and will obviously dealt with separately."*⁶²⁴ **30/1/2782** Justus was an Isle of Man company owned by Mills.

889. The Bank, via Remnant, Clode and MSG had been used to fund SMD, a private business venture by Robinson, Bancroft and Mills.⁶²⁵

890. On the 5th of April 2006, Remnant paid £13,255 to Highbury House. Neither Remnant nor its subsidiaries purchased any interest in Highbury House and therefore this payment is unexplained.

⁶²¹ As to which, see the Clothing Proceeds section above.

⁶²² Oval (2127).

⁶²³ Flip Media Ltd was incorporated on the 12th of October 2006 and started trading on the 1st of March 2007. Mills and Bancroft were directors and shareholders, owning 51% and 49% respectively. The business was sold to Sport Media Group plc. The new owners inherited the liability for a Clode loan for £125,079 made to Flip Media on the 13th of February 2007. The loan was eventually re-paid. See Mesher Clode report, para.5.144, ex.p.84557.

⁶²⁴ ex.p.134387.

⁶²⁵ The SMD / Flip Media transactions are usefully summarised in graphic form at para.8.14 of Mesher's Mills report, ex.p.75494.

891. Additionally, Mesher notes that Fantasy paid £174,428 to Clode between August 2005 and January 2007.

Towards administration

892. Before Remnant went into administration, Mills told Robinson that he intended to purchase one of the company titles, a review magazine called What's on in London ('What's On'), and that he intended Smollensky's (a restaurant chain you will recall) would run it.

893. Mills told Robinson that he would buy 'What's On' for £400,000. Robinson was "*frankly astonished*" that Mills would buy the title for what was clearly an over-value. The magazine had declined and 40% of its income was from adverts for escort girls.

894. Remnant had paid £250,000 for the title; a sale via Mills would give Remnant a large cash inflow and show a profit on the investment in the title of around £150,000. A listings magazine would clearly be outside the normal course of Smollensky's business.

895. 'What's On' was acquired not by Smollensky's, but by a company called Strand Magazines Ltd ('Strand') which had been incorporated in July 2006 for that purpose. Strand was owned by Mills through Sandstone and its directors were Mack and Thompson of Smollensky's. Mack recalls being approached by Mills and Scourfield in August of 2006 and asked to run the magazine⁶²⁶. **30/2/2783**

896. In a letter of February 2007, Mack stated that Strand acquired 'What's On' from Remnant on the 1st of September 2006 for £400,000⁶²⁷. This accords with the

⁶²⁶ ex.p.164543.

⁶²⁷ ex.p.61127.

purchase price included in the sale agreement drawn up by Burges Salmon⁶²⁸. **30/3/2784 (2789)**

897. In an e-mail of the 3rd of April 2007 to Nicolle Hallt at HBOS, Mack said that the purchase of ‘What’s On’ was, “*all paid from a loan.*” According to Mack, the loan monies went partly to Remnant in consideration for ‘What’s On’ and partly to fund Strand.⁶²⁹ Mills’ apparent generosity over the purchase price was no doubt connected to the fact that he wasn’t risking a penny of his own money in the deal.

898. Strand actually borrowed £680,000 from Clode in November of 2006 and a further £70,000 in March of 2007. In May of 2007, liquidators were appointed to Strand. Clode appeared as the largest creditor, owed £760,000 (the sum of the two loans plus an arrangement fee on the first loan but not interest). No repayments had been made against the loans and Clode wrote off the whole amount.

899. Mills was the largest shareholder of Clode. He was also the owner of Strand and on the board of Remnant. Clode funding was advanced to Mills to buy ‘What’s On’. This funding was never re-paid and, ultimately, HBOS suffered financial loss as the largest of Clode’s creditors.

900. In 2006, Robinson recalls Mills telling him that Scourfield had a “*new boss*” and that how he dealt with him would make the difference between them, “*drinking champagne or water for the year*”⁶³⁰. No doubt this was a reference to the arrival of Tom Angus in High Risk.

901. Buchanans prepared a report on Remnant in October of 2006. Its conclusions were damning, noting that:

- (i) The loans advanced had failed to match the service of the debt;

⁶²⁸ ex.p.164545. £396,997 of which was for goodwill.

⁶²⁹ ex.p.164543. It appears that Mack mistakenly refers to the purchase price as “£500k”, in contradiction of the £400k in her letter of February, quoted in the paragraph above. The latter sum corresponds to Robinson’s recollection, to the sale agreement and to press reports from the time. As to the latter, see Mesher Remnant report, para. 5.55, ex.p.75822.

⁶³⁰ Robinson, st.p.797.

- (ii) The companies had liabilities of between £1.7 million and £2.6 million, had severe cash flow difficulties and were insolvent;
- (iii) There was no justification for providing additional funding; and'
- (iv) Exit strategies should be considered.**27/17/2578-81**

902. Throughout the period of Quayside's involvement with Remnant its trading position worsened, its borrowing grew and its overall indebtedness increased. By the end of August Remnant's debts were in excess of £16 million.

903. The liquidator was appointed on 4th April 2007.

ARRESTS AND INTERVIEWS

DAVID MILLS ('DM')

904. DM was arrested on 1st October 2010. He was interviewed under caution that day and on two subsequent occasions. He was charged on 8th January 2013.

905. At the outset of each interview each defendant was cautioned in the following terms: *"You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence"*. All of the interviews were electronically recorded. What follows in this section is a summary of those interviews.

906. Please remember this very important rule of evidence which is particularly relevant when it comes to interviews: what one defendant says about another defendant who is not present at the time is not evidence against the absent defendant.

1st October 2010

907. DM said that he had been the CEO of Quayside Corporate Services ('QCS') until about two years ago. QCS provided independent advice to banks and financial institutions.

908. Most of their business was with Bank of Scotland ('BOS'), but they also worked for RBS, HSBC and Barclays. They had worked with BOS for five years from 2002/3.

909. DM first met Lyndon Scourfield ('LS') when LS visited a company in Bristol that DM sat on the board of. LS subsequently contacted him and asked if he would do some consulting work for the Bank.

- 910.** The first company DM was involved in through LS was Mezzanine Group whose asset value was far less than their debt to the Bank. LS asked him to have a look at it and the directors asked him to become a non-executive director.
- 911.** He said they also did a lot of independent business reviews for the banks, where they would involve a consultant to assess the company for the bank.
- 912.** He said that they would do presentations to BOS about businesses in which QCS was involved; the head of high risk would come down from Edinburgh.
- 913.** He said that Michael Bancroft ('MB'), who specialised in textiles, was one of the consultants they used. He was a self-employed consultant who was hired to do specific jobs within the textiles industry.
- 914.** DM said that he had first met MB many years before. MB had retired to Ireland and DM asked if he was interested in becoming a consultant to some textile businesses. DM said that he and MB had been friends, although he hadn't seen him for a while as he had retired.
- 915.** QCS was 66% owned by DM and 33% owned by Graham Hayes ('GH'). GH was not involved in the day-to-day running of the company and DM accepted he was the driving force behind the company.
- 916.** He said that QCS never bought any businesses it was involved with.
- 917.** He said that FTR was a customer of BOS that was losing money and QCS were asked to assist. They put MB on the board, but he struggled with the business and eventually proposed amalgamating four or five businesses within the textiles sector to enable BOS to recover its debts. He said that the business would have benefited from the economies of scale that merger would bring.

- 918.** He said that Tom Angus at BOS commissioned KPMG to review their proposal and they had agreed with it. However, the Bank decided it wanted to get out of all high-risk activities.
- 919.** He said that FTR changed its name to Magenta to avoid the negative brand within the industry but said that to his knowledge MB had not bought it.
- 920.** He thought it quite likely that virtually the entire board of FTR was removed by MB by the time it became Magenta. He said that would not be uncommon in streamlining businesses that had been historically unsuccessful.
- 921.** DM said that he had never seen MB being volatile and had only heard one complaint of that nature.
- 922.** The plan with Magenta was to consolidate with other textile businesses. He sat on the board as a non-exec and MB as an exec. He didn't have hands on the day-to-day operation of the firm.
- 923.** He said that Terry Holligan ('TH') had been taken on by MB as a consultant to Magenta to try to galvanise the business. DM said that TH had come to him twice and said that he wanted MB sacked and to take over as CE of Magenta because he could do a better job.
- 924.** He said that TH left Magenta and then '*worked assiduously to destroy the business*' by trying to set up in competition.
- 925.** He described TH as a '*perpetual liar*'. He said that he had had nothing to do with his recruitment; the first time he had met him was after he had been employed, not before.

- 926.** He said that QCS did not own a flat. He believed that MB rented a flat around Portman Square for himself and for Tony Cartwright ('TC') but that had nothing to do with QCS.
- 927.** He was adamant that he did not attend a meeting described by TH involving LS and MB. He said he would be surprised if TH had been recruited to prepare a business plan; they had people in-house who could have done that.
- 928.** DM said he didn't know that MB and TC had Magenta credit cards, but wouldn't be terribly shocked at that because they would have had to go about company business. He said that company cards ought not to be used for personal expenditure.
- 929.** He denied that he had 'phoned TH in the first week of his appointment and asked him how the business plan was coming along. He said that he wouldn't have had his number, had not yet met him and didn't know that he had been tasked with producing a business plan.
- 930.** DM said that TH had obtained an e-mail sent to MB and TC by DM which spoke of a '*utopian view*' and had sent it to the press as part of his campaign to discredit DM and his company. He denied that he had asked TH to deliver a brown envelope of cash to a flat. He said it was '*laughable*' and that QCS was a public company that did not deal in cash and which was audited by PWC. He could think of no reason why cash would be given to LS.
- 931.** QCS was involved in Remnant Media through the Bank of Ireland; they had a couple of consultants working in the firm. He queried why TH would have been at a Remnant event. He denied that his wife had invited TH to a Remnant launch party. He said that he thought TH lived in a 'Walter Mitty' world and that the party never happened.

- 932.** DM said that LS was one of the key people in BOS. He socialised with him and went on a cruise with LS and his wife. LS also came to his wife's fortieth birthday in Barbados, but each guest paid their own travel and accommodation.
- 933.** DM denied that he had instructed TH that LS was to be taken shopping on Magenta's credit card. He was surprised that TH had a company card.
- 934.** He said that any business plan (alleged by TH to have been altered) would have had to have been checked by KPMG. He denied attending a meeting at which TH raised the revised business plan and was told by TC that QCS had no intention of paying any money back to the Bank. DM repeated that KPMG would have picked up on any discrepancies and that TH was unreliable.
- 935.** DM said that TH was dismissed for being a liar and a disruptive influence.
- 936.** He found the figure to be paid to QCS of £267,000 unlikely. He said that QCS would bill the company monthly for its services. Although he was on the board he didn't agree that the appropriate way for him to be remunerated was by salary. He said that QCS invoiced the firm and paid the salaries of those people QCS had put in from that, including MB's
- 937.** DM said that Magenta might have been owned by Sandstone in the end, a company itself owned by DM. The purpose of Sandstone was to be a vehicle to hold shares to the Bank's order. He said that he was never going to get any equity out of the company; when the company reached a certain size it would have been sold and the Bank repaid.
- 938.** He said that he had met TC at a couple of social events over the years but that he worked for Magenta, not QCS. TC had worked with MB previously; MB described him as a straight-up guy, not dynamic.

- 939.** DM said he didn't know anything about MB and LS using prostitutes at the flat; QCS had never paid for prostitutes.
- 940.** He said the only link between Magenta and Remnant would have been MB and there would be no reason to transfer money between the two firms. He wasn't aware of a loan account set up by TC to benefit Remnant from Magenta by £1.6 million. DM said that he didn't take any active role in Magenta group at all.
- 941.** He said that Remnant was in terrible shape from day one. He said that if the Bank wanted to transfer money between two companies in which it was involved, that was up to them but he couldn't see the point. He had been a director of Remnant for a short period; he may have paid TC £1000 to take over his position on the board.
- 942.** He said that Kangaroo Poo ('KP') had been brought in under the Magenta umbrella by the Bank and so TC might have set up a loan account in respect of it. He didn't think that funds moving between them would be inappropriate as they had the same management (MB and QCS) and were thus not independent. He was asked if it would not have been more appropriate for KP to have got money from the Bank rather than through Magenta. He said that, *'effectively they did because it all came from the Bank...'*
- 943.** MB was QCS's representative with Multi Sourcing Group (MSG); he recalled Jill Blackburn (JB) complaining about MB. He said that initially she had thought he MB was fantastic but that they fell out.
- 944.** He recalled attending a charity ball through JB on two occasions. QCS would have paid for the table. He had no recollection of FTR paying in 2004, although he didn't think that would be inappropriate.
- 945.** At the ball in 2005, he remembered purchasing a ring at auction. The table was paid for by QCS.

- 946.** He said that the common allegation that the distressed companies run by QCS never made money, accrued further debt financed by the Bank and nevertheless paid QCS' fees was ridiculous. He said the Bank had brought QCS in when they needed to and signed the business plans off. He said that the relationship with the Bank was not with one person, but with about twenty directors.
- 947.** He denied that QCS and LS had an inappropriate relationship and that monies were siphoned off on a massive scale for the benefit of him and MB.
- 948.** He was shown an Amex credit card statement in his name with LS nominated as second card holder. He said that that was not appropriate; he had said to LS if there were things he had to pay for in relation to the business, he could use the card.
- 949.** He was shown the various transactions. Many of the US trips were business related, he said, not social. He couldn't explain why LS would buy shoes from Russell and Bromley on his card. He said that LS had paid him back for a watch he had purchased on the card as LS' card wasn't working.
- 950.** He thought that the Bank of Scotland would not have been happy with this arrangement. He was told the spending by LS on the card in less than two years was over £29,000; he responded that the vast majority would have been quite legitimate travel within the remit of the Bank.
- 951.** He said that none of the other twenty BOS managers he dealt with had cards on his account. LS, he said, was *'the only one who actually put himself out'*.
- 952.** He said he thought they had done a good job with the companies and that he was proud.

3rd February 2011

953. At the beginning of this interview, DM's solicitor read a prepared statement. It said that he had answered questions previously despite being unfairly treated (lack of disclosure etc.). He denied the allegations of fraud and corruption but said that he would not be answering further questions.

954. He did confirm that he had paid for the Silver Sea cruise.

955. He also explained that Sandstone held the shares of a lot of the defunct companies because the Bank didn't want to hold them. He said it was also used as a financing vehicle to do other deals in. If companies were sold, payment would go via Sandstone and ultimately back to the Bank if appropriate.

956. He said he was aware of Zudiki Investments. He agreed his e-mail address was david.mills@quaysidecorporate.com and was asked what an invoice from LS sent to that e-mail would be about. He made no comment. He also didn't answer why JS would be invoicing him for consultancy services.

957. He said that he would only deal with MB's expenses if TC brought queries to him. He said he had been to the Portman Square flat.

958. A further prepared statement was read. DM confirmed he had attended a party at an address in Portman Square with LS and DB. There was a lap-dancing show put on but he didn't know who organised it. There were no sexual encounters; he did not engage in sex with any of the performers.

959. He said that there were payments relating to Happyway through Burges Salmon, but that he was not a director of Happyway and had no control of the funds. This was something MB took care of.

960. Asked why the Bank would not pay LS's business expenses, DM said that you couldn't even claim a taxi from Bank of Scotland.

17th November 2011

- 961.** DM indicated that he proposed to answer no comment.
- 962.** He explained much of the LS travel as being business related. Both Bradman Lake and Seoul Nassau had offices in North Carolina. He denied the trips were 'jollies' for LS. He said that the official Bank line might be that there was a risk that LS would become a 'shadow director' of the companies, but the reality was that a representative of the Bank often had to be closely involved.
- 963.** He said that Sandstone was attractive to the Bank because the Bank didn't want to hold shares of a failed company and be seen not to pay HMRC or the creditors. Keeping the shares elsewhere meant that when they wanted to sell they could do so through the insolvency process and '*screw the creditors*' and maximise value.
- 964.** He said that although Sandstone was owned by him, the shares of the companies were only owned by him '*in a technical way*' as the Bank held the debenture and the security on the company and so controlled it completely. He said he never made one penny out of them.
- 965.** He said that the instructions to hold the shares in Sandstone would have come from whoever at the Bank dealt with the particular account. He couldn't answer if anybody more senior than LS had authorised this.
- 966.** DM said that Burgess Salmon were QCS' lawyers. Roger Hawes (RH) was the Burgess Salmon relationship manager for QCS. He held a limited power of attorney for DM to enable him to sign on DM's behalf.
- 967.** He said that Richard Paffard Consulting ('RPC') was his personal drawing company, separate from QCS. Fees from a distressed company might go through RPC if DM was doing work personally, for example sitting on a board in his own right.

- 968.** He confirmed his signature was on cheques from Sandstone, Knightingale and QCS to JS' company, Zudiki.
- 969.** After a break to consult his solicitor, a prepared statement was read on DM's behalf. He said that payments to Zudiki / JS were realised profits from a deal to manage and dispose of property in Swansea (in which Graham Hayes was involved) on behalf of the banks. The payments were for the specialist advice of LS's Welsh uncle who helped in the sale and were for a third of the profit (£250,000).
- 970.** He said that three cheques totalling £30,000 to Mark Dobson (MD) were a loan as he had some personal issues. He thought it was £20,000, as MD had told him he had lost a cheque and he had sent him a third. He had not been paid back. He was asked why the loan was broken into three parts, six months apart and suggested that MD might have an answer to that.
- 971.** Clode was a finance company backed by Barclays and the Bank of Scotland.
- 972.** He was asked why he would have facilitated Svenska Bank to loan Smollensky's £2.5 million, as opposed to the company borrowing from the Bank of Scotland. DM said that this would have been a decision authorised by PB at the Bank; that was the way they were asked to do it. He didn't think it was odd; it was an established way to obtain money to grow the business.
- 973.** DM said he was purely a tool in the Bank's management process; he said that the lawyers signed it off. He claimed that the Bank managed the high risk division in what might be thought of as a slightly unorthodox way. He confirmed that Knightingale or Sandstone would have charged an arrangement fee for the Svenska loans, perhaps 5%. He also agreed that they would have taken an additional charge on the monthly interest, deriving an immediate benefit to his companies.

- 974.** DM suggested that Bank of Scotland would also benefit from the loans being available. He said that the Bank may not have wanted to put more of its cash into a high-risk area and that it suited it to guarantee the company's finances elsewhere. He repeated that it was the Bank which was in complete control of this; he could not accept that they knew nothing about the arrangement.
- 975.** DM said that there would be letters of engagement for some of the work QCS undertook, although some might have been verbal agreements.
- 976.** He was asked why RPC would have been paid over £152,000 from a company called Eyesaglow on top of the £70,000 in fees paid for QCS' involvement. He said that the money was a success fee.
- 977.** He said the Bank, in the form of MD, had agreed to this. He said it was unrelated to him sending MD three cheques for £30,000. He said the Bank had offered the £152,000 and he took it. It was pointed out that MD had been at DM's 50th birthday party in Bangkok; DM denied there was a corrupt relationship.
- 978.** He was asked about the proposed merger and consolidation of Magenta / Kangaroo Poo / Xavia and Simon Jay to try to resurrect Theros. DM said he was to personally put £1 million into the plan. He did not think there was a conflict of interest from the fact that he and MB controlled all the firms apart from Xavia; he thought he was looking after the Bank's interest by putting together the amalgamation and KPMG did an independent review of it.
- 979.** He said it was rubbish to suggest that Simon Jay were refused further credit by the Bank because he and MB had not put in their expected amount as part of the 2004 management buyout. He suggested that PB had signed it off and wanted the deal done before Tom Angus came in.

MICHAEL BANCROFT ('MB')

980. MB was arrested on 12th October 2010. He was interviewed under caution that day and on two subsequent occasions. He was charged on 8th January 2013.

12th October 2010

981. MB was cautioned and then read a prepared statement. In it, he said that he had never been involved in approving loans granted by the Bank of Scotland or negotiating the terms of those loans. He said that he had never been a director of QCS or attended board meetings.

982. MB said that his business experience was in textiles and in turning around companies in that sector. This led to two consultancy projects for QCS in the period 2003 to 2007 the first of which concerned FTR.

983. His remit for both projects was to investigate the viability of the business and to make recommendations as to how best to improve results. His recommendations were that neither business was viable in its current form. He was paid by QCS. He did not regard his remuneration as excessive. He denied any criminal activity.

984. He said he would answer no comment to all further questions which he proceeded to do.

4th February 2011

985. MB's solicitor read a prepared statement indicating that he would not be answering questions; he then made no comment to all questions.

28th November 2011

986. MB read a prepared statement which indicated that he was not going to answer questions. It stated that he had never travelled abroad on behalf of QCS or any of the companies mentioned and that his two daughters had worked for QCS as secretaries.

987. He said that he had worked very hard for FTR and that any credits to his Bank account from QCS or FTR were authorised by QCS and then by HBOS.

988. He proceeded to answer no comment to all questions.

MARK DOBSON ('MD')

989. MD was arrested on 1st September 2011. He was interviewed under caution that day and on two subsequent occasions. He was charged on 8th January 2013.

1st September 2011

990. MD was cautioned and answered no comment to all questions.

16th November 2011

991. MD was cautioned and asked if there were any matters covered in the previous interview that he wished to comment on.

992. He answered no comment to all questions.

14th March 2012

993. MD was cautioned and answered no comment to all questions.

JONATHAN COHEN ('JC')

- 994.** Jonathan Cohen was arrested on 21st March 2012. He was interviewed under caution that day. He was charged on 19th September 2013.
- 995.** JC told the police that he was a fellow of the Institute of Chartered Accountants and had been practicing since 1984. He and Steven Davidson were the two partners of Brett Adams Accountants; the firm was established in 1996 and the two men had known each other since childhood.
- 996.** Brett Adams undertook accounts preparation, corporate and personal tax returns and audits. JC said that there was some overlap of responsibilities at the firm, but that he was the partner who dealt with audit work and Davidson dealt with many of the personal tax cases. The firm employed around a dozen professional staff.
- 997.** JC said that most of the work on an audit would be undertaken by staff; he would then review it, discuss it with the client and eventually sign it off. He said he was confident that any audit carrying his name would have been properly reviewed.
- 998.** He said that David Mills had been brought to Brett Adams as a client by Steven Davidson. JC said that his firm acted for a number of Mills' companies, including Quayside, Knightingale, Sandstone, Bradman Lake, Simon Jay, Clode, and Smollensky's. He understood that Mills owned some companies and had involvement with others as a turnaround consultant.
- 999.** JC said that Brett Adams had financial difficulties and was transferred to the HBOS high risk division at Reading, in order that the Bank's funds could be secured. Lynden Scourfield was their HBOS manager.
- 1000.** He was aware that some of the Mills companies were considered 'high risk' by HBOS, including Smollensky's and Bradman Lake, and were managed by

Scourfield from Reading. He said he knew that Mills had been asked to try to assist these companies.

1001. He said that he knew Scourfield had left his job and then resigned but said he did not know the reason for that.

1002. JC was shown a list of Brett Adams clients. He agreed that the firm had conducted audit work for Bradman Lake, Seoul Nassau, Smollensky's Balloon, Clode, Simon Jay and the St David's Centre. He said that they had prepared the accounts for others including Keyside, Mezzanine, Richard Paffard, Sandstone and Zudiki.

1003. He said that Brett Adams dealt with the personal tax affairs of David Mills and Graham Hayes.

1004. JC said that he could not recall the level of Bradman Lake's indebtedness, but agreed that Brett Adams had no other clients whose level of debt was £38 million. He agreed that many of the Mills companies owed very large amounts of money to HBOS and said that, during his audit and accountancy work, he had never seen a level of turnover from any of the companies that could support such debts.

1005. He said that he had a professional responsibility to qualify an audit report if he found something unsatisfactory and to discuss the issue with the directors. He should also remind the directors of their duty to obtain insolvency advice and possibly report them to the DTI. JC said that he did not report David Mills to any authority.

1006. He accepted that part of an auditor's role is to review a company's accounts and ascertain whether they are correct and reasonable and that the company is being run lawfully. He agreed that his responsibility was to the shareholders rather than to the directors.

- 1007.** JC said that Zudiki was a company formed for Lynden Scourfield's wife. Manchester Square Registrars ('MSR') was an entity which undertook company secretarial work and established companies for others. MSR set up Zudiki and owned fifty per cent of the shares.
- 1008.** He said that Zudiki would be last on his list if he were looking for an interior design company, although he claimed not to know whether it traded in that sector. He accepted that he should have established that monies passing through Zudiki were legitimate. He was told that £250,000 was transferred from Knightingale (which he audited) to Zudiki on one occasion. He said that he was aware that Lynden Scourfield was the driving force behind appointing David Mills to the various companies.
- 1009.** JC said he had met Michael Bancroft and that he understood he was an expert in the clothing industry.
- 1010.** JC said that the purchase of Simon Jay in 2004 was partially funded by HBOS and partially by a loan from Clode and that the directors were supposed to put in around £300,000 on top. He agreed they had not done so and that the accounts were amended to reflect this in 2006. He said that Brett Adams had informed the Inland Revenue but not the DTI.
- 1011.** He disagreed that he had not reported this because he did not want to damage Mills and *'kill the fatted calf'*. He had seen a facility letter from the Bank regarding Simon Jay.
- 1012.** JC said that Charles Neale and Ian Martin knew their business but were not as astute as Mills and Bancroft who were the driving force behind Simon Jay. He said that Simon Jay Ltd had been repaying the personal loans which the directors had taken out from Clode to buy the company. He agreed this was not an appropriate use of company funds. He could not comment on why he had done no more than amend the accounts.

- 1013.** He confirmed that Mills' company Quayside Corporate Services ('QCS') was invoicing Simon Jay for a similar figure to the monthly repayments due to Clode under the loan.
- 1014.** JC accepted that he was the auditor for QCS, Simon Jay and Clode, all companies involved in fraudulent trading. He accepted it was his personal responsibility to report the matter.
- 1015.** He thought it possible that he would not be able to point to any Mills company that showed signs of recovery.
- 1016.** He said that he understood Clode to provide personal finance to retail customers. He had identified corporate loans when he had performed the audit of Clode and had asked for a facility letter from HBOS. He said that as the auditor he must satisfy himself as to the recoverability of the loans on Clode's book. He said that he had put bad debt provisions into the Clode accounts.
- 1017.** He said that at the time he believed Clode was trading whilst solvent. He said that Mills was a director and shareholder of Clode. He accepted it was possible that if, for example, the £2million Sandstone loan had not been re-paid it would have sent Clode into administration.
- 1018.** He admitted that he and Steven Davidson had borrowed money from Clode whilst Brett Adams was Clode's auditor. He said that the Institute of Chartered Accountants probably wouldn't like it as it would possibly compromise his independence and that they would probably disqualify him as a result.
- 1019.** JC said that at the time it was the only funding they could obtain to keep the practice going. In November 2006, the Bank was refusing to honour Brett Adams cheques and at one stage the firm owed £700,000 to HBOS.

1020. JC was asked whether he had picked up on the fact that Alison Mills had taken a £60,000 loan from Clode to her company, Wordsters. He could not recall, but agreed that it would have been suspicious if Clode repaid the loan.

1021. He could not recall whether he had done further work around the issue of Mills' companies receiving such substantial loans through Clode. He agreed that it was a conflict of interest both for Clode to have such a large corporate book when their business was retail loans and for Mills to be chairman of Clode and at the same time be the owner of many firms in receipt of Clode loans.

1022. He could not explain why he failed to flag up the fact that Mills had taken a loan from Clode. He agreed that, overall, any responsible auditor would have been concerned over Clode's position.

ALISON MILLS ('AM')

- 1023.** AM was arrested on 27th June 2011. She was interviewed under caution that day. She was charged on 8th January 2013.
- 1024.** A prepared statement was read on her behalf.
- 1025.** It said that the disclosure provided was insufficient for a meaningful interview. It said that she denied any corrupt relationship or fraudulent behaviour. She said she was not involved in her husband's businesses and played a supporting role as his wife.
- 1026.** AM had a relationship with LS and JS in the context of her husband's corporate activities.
- 1027.** A large group of people travelled to Barbados for her fortieth birthday, including the Scourfields.
- 1028.** She indicated that she would not answer any specific questions.
- 1029.** She then answered no comment to all the police questions.

JOHN ANTHONY CARTWRIGHT ('TC')

1030. TC was arrested on 29th September 2010. He was interviewed under caution that day and on three subsequent occasions. He was charged on 8th January 2013.

29th of September 2010

1031. TC was cautioned He said that he was a self-taught accountant. He had never been finance director of QCS. He explained that QCS were employed by HBOS to try to turn around failing companies. DM and possibly his wife Alison were the directors of QCS.

1032. DM employed MB to look after FTR, MSG and Cotton Bottoms.

1033. He said that there was a plan to rescue FTR (re-named Magenta) by merging with Xavier and Simon Jay but that HBOS knocked it on the head.

1034. TC said he had known DM as a friend since about 1990. He said he was approached by MB and asked if he could help with FTR. He had known MB since 1981. He was a friend of MB and his family. He hadn't seen or spoken to DM since 2007

1035. He was not QCS' accountant. He would invoice Magenta for his work and MB would sign it off. He had done a small project direct for DM.

1036. His daily rate was £300 per day. DM would check the invoices and expenses.

1037. He said that there was a presentation of the Magenta rescue plan to LS' boss from Edinburgh, who said it was positive on how the £16 million debt could be eradicated.

- 1038.** TC said he was paid by cheque or transfer, never in cash and by the company he worked for not by QCS. He said that LS Ok'd every payment. He did not get on with LS, who he thought was jealous of the fact that he had known DM and MB longer. He was sure that LS was not doing things correctly.
- 1039.** He said that FTR lost the M&S contract and turnover dropped by about half as a result. The only option was to lose the workforce, close the factory in Cwmbran and make the products overseas. The head office of Magenta was 71, Gloucester Place. QCS occupied a floor and DM held board meetings there for Corporate Jet Services, Smollensky's, etc.
- 1040.** TC said that he stayed a couple of nights a week in London, at the Hyatt or in a flat leased by Magenta in Portman Square. He said that he normally went to M&S and then watched TV when he stayed at the flat; sometimes he would go out with DM or MB.
- 1041.** TC had to produce a profit and loss account for Magenta. MB was on the board of Magenta; he thought DM was as well. He accepted that he would have knowledge of the expenditure because he prepared the management accounts. He said that TH had been appointed by MB but had then tried to persuade DM and LS that MB shouldn't be involved in Magenta.
- 1042.** He said that he got on OK with TH. He produced a three-year business plan with help from TH to show the Bank the potential of the company and encourage them to authorise further lending. TH was to give TC his projections for inclusion in the plan. TC thought the company only needed a few million pounds extra from the Bank.
- 1043.** He denied that the business plan (later clarified to be a profit and loss sheet) had been altered by the figures being doubled. He said there might be a different plan with slightly lower figures, but not ten and a half million pounds lower. He said he had always queried why so much money went to QCS from Magenta when the

company was in such financial trouble. He said there were certain things he could not control. He didn't think it was fair or lawful to take so much money.

1044. He said that MB had a Magenta credit card, TH may have had one but that DM, LS and he did not. He said that MB might have put a few items on the card that weren't for the company and DM then saw every statement. DM had said that he had to make sure that everything was above board in case the Bank's auditors came in.

1045. TC said he did not know about MB buying furniture for his home from Selfridges on the company card. He remembered TH putting the issue on an agenda. He did not know about Rolex and Cartier watches being purchased for LS on TH's card.

1046. He said he could not think why he would have doubled TH's projected turnover figures in the business plan, although he seemed to accept he might have done so at MB's request.

1047. He agreed that QCS fleeced companies and that it was not above board. He thought the wages for the designers at Magenta were too high. He had told MB that he had to keep the overheads down. He thought the whole thing was about getting money from LS; he was pretty certain that money changed hands between DM and LS.

1048. TC said that MB had told him that LS was putting payments on MB's card, and, that LS was '*on the take*'. TC thought that they kept LS sweet. He thought MB had a Rolex and provided details of what he thought MB's assets were.

1049. He said that LS had to keep the business running as he was getting money from it '*by hook or by crook*' to fund his lifestyle. He thought it quite possible that these companies funded high living for DM, MB and LS.

- 1050.** He said that DM and LS had been involved with prostitutes at the flat in Portman Square. He thought that MB might have sat there. He said he was not involved. He thought the girls might have been provided by Simon Robertson from Remnant. He had no knowledge of cash deliveries to the flat for LS' fun money, although he suspected that could have happened.
- 1051.** TC said that he was a company director of Remnant towards the very end of the business. DM asked him to do it as he wanted to resign. He was paid £1000 and sat in on a couple of meetings.
- 1052.** He volunteered that Remnant borrowed money from Magenta, because they were desperate to keep the former company going. The loan was OK'd by LS and it amounted to £1.6 million. LS had told him not to mention it and he thought it was corrupt. He didn't think the Bank in Edinburgh knew anything about it.
- 1053.** He thought the loan was illegal because it never looked like Remnant was going to survive and thus could not pay back its liability.
- 1054.** MB had 'phoned TC from Portugal when he sensed there was a problem with TH. TC said that he was not at a meeting at Hardy's when MB stormed out. He said that he was a little protective of MB.
- 1055.** He said that he couldn't recall TH's last board meeting where the subject of credit cards was raised.
- 1056.** He thought that DM might have bought LS a watch, or given him cash to buy a watch.
- 1057.** He recalled Emma Marriott who attended a meeting with LS regarding Kangaroo Poo. Kangaroo Poo also had a loan from Magenta, partly to help it pay the QCS invoices.

- 1058.** He said that he was surprised when he was arrested. He accepted that he was aware that it was not a legitimate business practice to fund companies that could not service a debt. He said that DM or LS would have told MB to tell him to create a loan account. He said that in hindsight he should have walked away.
- 1059.** He said he found the fact that it was all going to come tumbling down interesting and agreed that it was like watching a car crash
- 1060.** He was asked about his personal finances. He said he was the company secretary of Flip Media and Happyway, both owned by DM. He said he wasn't paid to do it. He said he had never received 'sweeteners' or bonuses from DM or MB. He agreed that he was part of the Magenta loans and that it might fit within the definition of money laundering.

1st February 2011

- 1061.** He said that Fraser Kelly from HBOS arrived after LS vanished and pulled the plug on the Magenta business plan.
- 1062.** He had spoken to MB since he was arrested. He repeated that he was asked to produce management accounts on a three-monthly basis for Magenta by DM and LS. He agreed that he may have told Christina Levy to increase her projected targets in her business plan.
- 1063.** He said that he had been paid £1,000 by DM for the service he had done at the bitter end of Remnant. He was paid £10,000 by DM through Burges Salmon for winding up MSG. When it was pointed out he received £20,000, he said that £10,000 went to DM's brother, who had done some work for the companies.
- 1064.** He accepted that the money might have been partly a sweetener to him. He said DM didn't want to be traced as paying his brother.

1065. He agreed up to a point that MB used him because he thought he could get him to do pretty much anything and that MB had abused his friendship with him. He admitted being highly suspicious of the loan account from Magenta.

1066. He said that Simon Robinson had bought Remnant from Richard Desmond and had been ripped off. It had problems right away. LS decided he would keep it going by paying all the costs from Magenta. LS couldn't have gone to the Bank as they'd have shut the company down.

20th October 2011

1067. He discussed the plan to consolidate Magenta. He said that he was not aware that MB had changed the name of MSG to Happyway MSG, although he had heard of Happyway. He said that MSG was not profitable; it might have looked that way because the debts were being absorbed by Magenta.

1068. He said that LS authorised the loan from Magenta to Remnant; it was made known that Magenta had to 'support' Remnant by paying its bills. He felt that LS wanted Remnant to keep going so that it could pay the QCS management charges. He knew LS was behind the scheme because TC had mentioned it at a meeting in Reading in front of someone from KPMG or Deloitte and LS rebuked him afterwards.

1069. He was asked why the £20,000 (or £10,000) he was paid by DM for work at Magenta was sent through the Burges Salmon client account. He observed that the payment was made after Magenta was in receivership. It was suggested this money was from MSG, following Gillian Blackburn buying the firm out. He said that that money should have gone straight into Magenta.

1070. He said that he had rung DM and said that for him to pay DM's brother wasn't correct, although he still did so. At the time it hadn't occurred to him it was Bank money. He accepted that '*in a way*' he was compliant in getting the money to

DM's brother to avoid him simply being a creditor of the insolvent firm. He was uncomfortable about doing it.

1071. He was asked about an accountant called Whalley who had worked for Remnant on behalf of QCS but was then paid twice, once by the Bank and again by Magenta. He wanted to return the Magenta cheque but was told to pay it into the Burges Salmon client account. He didn't recall an e-mail confirming the transaction, which was addressed to 'Tony' but e-mailed to a secretary and Roger Hawes. TC thought this was a wrong thing to do.

1072. He said that Clode was effectively a bank within a bank.

11th September 2012

1073. TC said he was not given a reason why Magenta funds were paid into Burges Salmon. DM would have made that decision.

1074. He said that DM was on the board of Clode and effectively authorised loans to himself to help buy Simon Jay. TC said that he was paid about £2,500 from Simon Jay.

1075. He said that he was aware of Magenta money being transferred to Burges Salmon but that he hadn't done it.

1076. He said he had been paid through Burges Salmon for work he had done for a firm called Clothing Proceeds. He said that he would submit his bills to DM as '*J A Cartwright Secretarial Services*'. He said DM had done nothing for Clothing Proceeds and was shocked to learn that he was nevertheless paid £24,000. He didn't know why he would be paid through Burges Salmon, but agreed that the Burges Salmon account was run as if it were DM's private account.

1077. He said that he didn't know why he would have received any monies (£10,000) from Sandstone, four days before he received the £20,000 from Burges Salmon.

THE INDICTMENT & THE ISSUES IN THE CASE

1078. The defendants face an indictment containing 6 counts. May I turn to consider it and when I do so please bear the following important matters well in mind:

- (i) It is for the prosecution to prove the guilt of a defendant, not for him or her to prove that he or she is 'not guilty';
- (ii) You try each defendant separately;
- (iii) You try each count separately;
- (iv) Nothing which I say is evidence; and,
- (v) Anything which I say about the law is subject to the directions which HH will ultimately give you.

1079. On Count 1 DM, MB and MD are charged with conspiracy to corrupt together with LS. A conspiracy is an agreement. What is alleged on this count is that:

- (i) they agreed corruptly to give / offer (in the case of DM and MB), and accept / obtain (in the case of LS and MD);
- (ii) gifts and consideration (i.e. something of value such as money);
- (iii) as inducements and rewards for LS and MD
 - (a) to do or not do acts in relation to the Bank's affairs or business, or,
 - (b) to show favour or not to show disfavour to DM and MB and others in relation to the Bank's affairs or business.

1080. On Count 2 DM, JC and AM are charged with fraudulent trading together with LS in respect of Clode. What is alleged on this count is that they were knowingly party to the carrying on of the business of the Clode Group for a fraudulent purpose, namely to obtain personal gain to which they were not entitled at the expense of the company and its creditors.

1081. On Counts 3 and 4 DM, MB and TC are charged together with LS with fraudulent trading in respect of Theros. What is alleged on these counts is that they were knowingly party to the carrying on of the business (Count 3) of Frank Theak &

Roskilly Ltd / Magenta Studios Ltd (part of the Theros Group) and (Count 4) of MSG Ltd (part of the Theros Group) for a fraudulent purpose, namely to obtain personal gain to which they were not entitled at the expense of the company and its creditors.

1082. On Count 5 DM and MB are charged together with LS with fraudulent trading in respect of Remnant. What is alleged on this count is that they were knowingly party to the carrying on of the business of Remnant Media Ltd for a fraudulent purpose, namely to obtain personal gain to which they were not entitled at the expense of the company and its creditors.

1083. On Count 6 all six defendants (DM, MB, MD, JC, AM, and TC) are charged with conspiracy to conceal criminal property together with LS. What is alleged on this count is that they conspired together and with RH and others to conceal, disguise, convert and transfer criminal property, namely the proceeds of the corrupt relationship described in count 1. In everyday parlance, money laundering; the movement of money between accounts in order to hide its origins and give it the appearance of respectability – making it look ‘clean’, hence the word ‘laundering’.

1084. What then are the issues between the prosecution and each of the defendants which you are going to have to determine in respect of each of those six counts?

1085. Based upon my understanding of the cases to be advanced on behalf of the defendants I am going to attempt to identify for you the principal matters which we understand to be in issue between the individual defendants and the prosecution

1086. David Mills is indicted on all 6 counts which you are trying. At the outset of this long opening I said to you that the corrupt relationship between these two men lies at the heart of this case. And the evidence will demonstrate that theirs was a corrupt relationship from which both men reaped unjust and very considerable financial rewards.

- 1087.** On behalf of DM, I anticipate that it will be suggested that:
- (i) His relationship with LS, MD and others within the Bank was a genuine business relationship, which in the case of those two men developed into something more than that;
 - (ii) The ethos of the IA division of the Bank was to do all that was possible not to write off debts and that remained the position until late 2006 / early 2007;
 - (iii) QCS was instructed by the Bank on the basis of the commercially valuable services the company provided and not because of any corrupt arrangements with LS or MD;
 - (iv) Any monies received by him or his companies were not the proceeds of criminal activity (count 6);
 - (v) In respect of Clode, the Bank was aware of the change in lending strategy to include corporate loans;
 - (vi) Lending responsibility remained with Nick Davies who was the CEO;
 - (vii) All the loans advanced were in the commercial interests of all parties;
 - (viii) With regard to counts 3 and 4 it will be submitted that DM had little involvement with the day to day running of FTR / Magenta and had minimal involvement in the trading of MSG;
 - (ix) On count 5 he had very little involvement in Remnant prior to becoming a NED in 2005; and,
 - (x) He was unaware of money being transferred or loaned from Magenta to Remnant.

1088. Michael Bancroft is indicted on 5 of the 6 counts which you are trying; he is not indicted on count 2, Clode. On behalf of MB, I anticipate that it will be suggested that:

- (i) MB had no input into the arrangements between the Bank and QCS;
- (ii) MB did not have a corrupt relationship with LS. MB tackled DM about the amount of corporate entertainment LS was being provided with and was told by DM that LS had declared it all to the Bank;

- (iii) LS had two holidays at MB's villa in Portugal which he had expected LS to pay for;
- (iv) MB's first assignment was at FTR which he endeavoured to turn around despite its many problems. MB was wholly unaware that he had acquired a joint holding with DM in the parent company;
- (v) LS was at all times kept fully in the picture re this group of companies;
- (vi) In late 2005 / early 2006 LS began to play a much more active role in Magenta and ordered TC to pay bills for Remnant from Magenta. He and TC formed the view that they had to do as LS directed;
- (vii) MB was unhappy about the way Remnant's finances were being run and resigned a few weeks after being appointed to help out; and,
- (viii) All of Bancroft's money was earned through hard work and was not the proceeds of crime.

1089. Mark Dobson is indicted on 2 of the 6 counts which you are trying, counts 1 and 6. On behalf of MD, I anticipate that it will be suggested that:

- (i) The prevailing attitude of the Bank was to help the business survive rather than call in loans;
- (ii) The St David's Centre case was the first time MD had used QCS who performed well on the project;
- (iii) The three payments he received of £10K each were consultancy fees for general financial and corporate banking advice;
- (iv) The Eyesaglow payment of over £150K was a success fee to QCS as the Bank had not suffered a loss; and,
- (v) Neither the trip to Bangkok nor the outing to Ascot was inappropriate.

1090. Jonathan Cohen is indicted on 2 of the 6 counts which you are trying, counts 2 and 6. On behalf of JC, I anticipate that it will be suggested that:

- (i) The audits which he undertook in respect of Clode were proper and efficient and met professional standards;
- (ii) The loans which he and his business partner had received from Clode did not affect the conduct of the audits;

- (iii) If there was a corrupt relationship between DM and LS, JC was unaware of it and did not know that any money was or might be the proceeds of crime;
- (iv) JC set up Zudiki on the instructions of LS but was not told exactly why the company was being set up; and,
- (v) JC was under no obligation to discern the reasoning why money was coming into Zudiki and had no suspicions about the payments.

1091. Alison Mills is indicted on 2 of the 6 counts which you are trying, counts 2 and 6. On behalf of DM, I anticipate that it will be suggested that:

- (i) She worked for and with her husband for a number of years but was unaware of any payments from him or any of his companies to LS, Zudiki or MD;
- (ii) The Scourfields came to attach themselves to the Mills' social circle;
- (iii) She became involved with Clode at her husband's suggestion. Her involvement was confined to the retail side of the business. The loan arrangement whereby her annual salary was paid in advance disguised as a loan was not done at her instigation; and,
- (iv) The Bank was fully aware of Clode's corporate lending strategy.

1092. Tony Cartwright is indicted on 3 of the 6 counts which you are trying, counts 3, 4 and 6. On behalf of TC, I anticipate that it will be suggested that:

- (i) He was engaged by MB to provide accounting assistance to FTR / Magenta and was also engaged in a similar role at MSG;
- (ii) As part of his work he produced management accounts which were forwarded to LS;
- (iii) He did not make any payments for FTR / Magenta;
- (iv) He submitted invoices for his work at £300 per day plus expenses; and,
- (v) The payment he received from the Burges Salmon client account was for his assistance in winding-up MSG and had been authorised by DM and MB as well as RH.

1093. May I conclude by saying a word about delay? The majority of the events with which you are concerned occurred more than 10 years ago. This case has taken an inordinately long time to bring to trial. That is to be regretted. No one, however, suggests that the delay is such that there cannot be a fair trial. Whilst memories may fade in respect of certain matters, many of these events are highly memorable and of course there is an abundant paper trail which we will follow over the coming weeks and months.

Brian O'Neill QC

Angus Bunyan

2 Hare Court

Temple

26th September 2016