

OPUS2

In the Matter of Provident SPV Limited

Day 1

July 30, 2021

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Phone: 0203 008 6619

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1 Friday, 30 July 2021
 2 (10.30 am)
 3 (Proceedings delayed)
 4 (10.34 am)
 5 (No transcript due to poor audio quality from the court)
 6 (10.59 am)
 7 Submissions by MR ISAACS
 8 MR ISAACS: It is 10/73.
 9 SIR ANTHONY MANN: (inaudible).
 10 MR ISAACS: It's the second — it's the second sanction
 11 bundle.
 12 SIR ANTHONY MANN: (inaudible).
 13 MR ISAACS: Tab 73. It's the little tab 10 two-thirds of —
 14 SIR ANTHONY MANN: (inaudible).
 15 MR ISAACS: My Lord, I mean, I can answer your question.
 16 It's the (inaudible), it's as your Lordship says. It's
 17 the parent.
 18 SIR ANTHONY MANN: (inaudible).
 19 MR ISAACS: It commits to contributing (inaudible) an amount
 20 equal to the surplus. Your Lordship is correct. That's
 21 the way it works.
 22 So, yes, your Lordship just suggested to me that the
 23 key paragraph is paragraph 49 and, I agree, that is —
 24 SIR ANTHONY MANN: (inaudible).
 25 MR ISAACS: It will save a lot of time if I don't need to go

1

1 to them, my Lord, if we just add this one, but the FCA,
 2 as you will have seen, is also (inaudible) and is
 3 persuaded by them, which is again the reasons why it
 4 doesn't (inaudible).
 5 SIR ANTHONY MANN: (inaudible).
 6 MR ISAACS: Indeed, my Lord. (inaudible).
 7 SIR ANTHONY MANN: (inaudible).
 8 MR ISAACS: Your Lordship has seen that we have engaged very
 9 (inaudible) FCA.
 10 SIR ANTHONY MANN: I understand, and correct me if I'm
 11 wrong, but the FCA was (inaudible).
 12 MR ISAACS: Yes.
 13 SIR ANTHONY MANN: (inaudible).
 14 MR ISAACS: Before the scheme was (inaudible) there is
 15 ongoing — I mean, obviously the company as a regulated
 16 entity engages with the FCA (inaudible) on ongoing
 17 basis, but my understanding, and I can check this, is
 18 that the idea that the scheme merged (inaudible)
 19 discussion with the FCA in a situation in which the
 20 lenders have (inaudible) which are at the very least
 21 hundreds of millions and possibly billions (inaudible)
 22 and they can't possibly be (inaudible) how any company
 23 can deal with that. That's the context in which
 24 (inaudible) this scheme.
 25 57, my Lord, page 49:

2

1 "On 15 June 2021, PPC formalised the Group's
 2 decision to run—down its business, by applying to the
 3 FCA for a variation of PPC's regulatory permissions, to
 4 prevent it from issuing any new loans. On 16 June 2021,
 5 the FCA acknowledged PPC's request for a variation of
 6 permissions with immediate effect. Accordingly, as of
 7 15 June 2021, PPC is unable to issue any new loans to
 8 any customers in the UK, and may only collect loans
 9 which it has already issued."
 10 58:
 11 "The Parent does not intend to resurrect PPC's
 12 business using a new entity following the Scheme's
 13 implementation, or to trade under any of PPC's trading
 14 names. Any new personal loans lending product that the
 15 Group may in the future launch will be directed to
 16 a different segment of the market to the high cost short
 17 term credit market on which PPC focused, will not use
 18 PPC customer data, and will not operate under the
 19 "Provident Personal Credit", "Greenwood", "Glo" or
 20 "Satsuma" brands."
 21 Now, that's another important point for the FCA,
 22 my Lord, as your Lordship will have seen, because they
 23 are very concerned about PPC. They were concerned
 24 (inaudible) and this closes down any possibility of
 25 (inaudible).

3

1 Then, my Lord, I was proposing to deal with the EY
 2 report, which is section D of this witness statement,
 3 but, having regard to what your Lordship says, I don't
 4 intend to do that.
 5 SIR ANTHONY MANN: EY have reviewed (inaudible) as
 6 I understand it (inaudible). They are not in a position
 7 to (inaudible) and I don't think they've queried the
 8 assumption based on that.
 9 MR ISAACS: That's correct, yes, and they have made
 10 conclusions on the significant points, such as
 11 (inaudible) value of the ongoing business (inaudible)
 12 approximately zero, which is very important, and also
 13 (inaudible) that there's no return being made
 14 (inaudible) liquidation on administration.
 15 The next section, my Lord, is F, which paragraph 69
 16 S53.
 17 SIR ANTHONY MANN: Say that again.
 18 MR ISAACS: It is paragraph 69, S53, "Effect on the lenders
 19 if the scheme is not implemented". So picking this up
 20 at 69:
 21 "Until ...2016, PPC's business ... was profitable.
 22 From 2017, however, PPC's business suffered financial
 23 difficulties, reporting losses for each of the following
 24 five financial years, as shown in the table below ..."
 25 SIR ANTHONY MANN: (inaudible).

4

1 MR ISAACS: Paragraph 70:
 2 "PPC required the Group's financial support ... As
 3 at 17 December 2020 ... PPC's outstanding borrowing
 4 under intra-group loans issued by the Parent stood at
 5 £256.7m (in respect of PPC's UK branch) and £13.1m (in
 6 respect of PPC's Republic of Ireland branch)."
 7 And then there's a table in paragraph 71, which just
 8 reading from the second part of paragraph 71, for the
 9 period from the end of 2007 until 2020, there was a net
 10 outflow to the (inaudible) from the parent £462 million.
 11 The table also shows a net outflow of £510 million when
 12 taking into account additional capital, which is
 13 forecast to be required til the end of this year.
 14 Paragraph 72, at the top of page 55:
 15 "Subsequently, on 13 January ... the Parent's" --
 16 SIR ANTHONY MANN: (inaudible).
 17 MR ISAACS: Sorry, my Lord, 72, so it's the top of the next
 18 page, page 55:
 19 "... on 13 January ... the Parent's board ...
 20 authorised that Parent's management were to work on a
 21 Scheme that would see the Parent make a £50
 22 million (inaudible) contribution ... [and] costs.
 23 "The alternative ... was to withdraw financial
 24 support to PPC. Had this occurred, PPC's directors
 25 would have had no option but to place PPC into

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1 liquidation ... because PPC would have had no prospect
 2 of meeting its liabilities as they fell due."
 3 Over the page, 76, my Lord, 20 June, a committee of
 4 the parent's board resolved to withdraw funding for
 5 (inaudible) schemes implemented.
 6 Paragraph 77, the second line:
 7 "... the failure of the Scheme would also leave the
 8 Lenders in a balance sheet insolvent position. The
 9 withdrawal of the Parent's financial support for PPC
 10 would leave facing ... cash flow insolvency."
 11 Further down:
 12 "... the Lenders would be highly likely to be
 13 insolvent. I further understand that the directors ...
 14 would need to take all reasonable steps available to
 15 them ... to minimise loss to ... creditors.
 16 "Faced with the withdrawal of the parental support,
 17 the failure of the Scheme access to minimal (if any)
 18 liquid funds, and no means of trading out of their
 19 financial difficulties, the ... directors would be
 20 required to take steps to put them into insolvent
 21 liquidation."
 22 The next paragraph is paragraph -- section G:
 23 "The group will not receive any pecuniary benefit
 24 from the scheme's invitation."
 25 Paragraph 79:

6

1 "If the Scheme has implemented the group will
 2 continue to proceed with the managed wind-down ..."
 3 80:
 4 "While it is highly likely ... this will result in
 5 any distribution to the Parent in the form of repayment
 6 of ... Intercompany Loan, this remains a remote
 7 possibility ..."
 8 Paragraph 81:
 9 "Even if ... high case assumptions are realised and
 10 the Group recouped circa £4 million from the managed
 11 wind-down ... this I will pale in comparison to the ...
 12 £70 million contribution to the Scheme."
 13 And then paragraph 82 refers to the turnover
 14 provisions.
 15 SIR ANTHONY MANN: So managed wind-down (inaudible) one
 16 assumes (inaudible). Managed wind-down (inaudible).
 17 MR ISAACS: To set-off, yes, that's correct.
 18 SIR ANTHONY MANN: (inaudible). So how do you manage to --
 19 so you won't be able to recover any particular loan
 20 until (inaudible).
 21 MR ISAACS: That's correct, my Lord.
 22 SIR ANTHONY MANN: How is that going to work (inaudible)
 23 ascertained whether or not -- you won't know for
 24 six months whether or not there is going to be
 25 (inaudible) set up.

7

1 MR ISAACS: That's correct.
 2 SIR ANTHONY MANN: So what is going to happen to the
 3 recovery of loans in that period?
 4 MR ISAACS: A very good question, my Lord, that I can't
 5 answer. I will have to take instructions. Following
 6 the logic to your Lordship's question, (inaudible).
 7 SIR ANTHONY MANN: (inaudible).
 8 MR ISAACS: My Lord, if I may take instructions, rather than
 9 guessing.
 10 SIR ANTHONY MANN: Yes, good idea.
 11 MR ISAACS: But does your Lordship mind if I -- I can do it
 12 now or I can sort of come back to it?
 13 SIR ANTHONY MANN: You should do it now, otherwise I might
 14 forget.
 15 MR ISAACS: Yes, I'll take instructions now. (Pause)
 16 My Lord, (inaudible) I'd just like to interrogate
 17 the answer, if I may it?
 18 SIR ANTHONY MANN: (inaudible). So, subject to that point,
 19 just so I understand the mechanics, the scheme will
 20 exist, money will be paid (inaudible) and the scheme
 21 will exist (inaudible) the scheme will carry on
 22 collecting its loans and the proceeds of that collection
 23 will potentially be funding the exercise of the
 24 wind-down -- the excise of the (inaudible) and winding
 25 down the company (inaudible) ongoing staff costs

8

1 (inaudible).
 2 MR ISAACS: Yes, my Lord. As your Lordship has seen, it is
 3 not anticipated (inaudible) for the -- if the recovery
 4 (inaudible) recover the costs (inaudible). I will come
 5 back to that, my Lord (inaudible).
 6 The next section, section H, the parent's
 7 contribution to the scheme, paragraph 84. I'm not --
 8 I'm sorry, my Lord, I don't know if I did read 83 or
 9 whether I stopped just before then, maybe I didn't.
 10 SIR ANTHONY MANN: You didn't.
 11 MR ISAACS: Okay. Then I was telling your Lordship
 12 (inaudible):
 13 "During the managed wind-down, PPC will continue to
 14 incur costs. From the end of July 2021 these costs are
 15 expected to amount to between £32 million and £40
 16 million including payments for intra-group services and
 17 redundancy... While PPC will attempt to cover these
 18 costs out of the realisation of its assets, any
 19 shortfall will need to be covered by funds advanced from
 20 the Parent."
 21 H, "The Parent's contribution to the scheme":
 22 "The Parent decided to contribute £50 million to the
 23 Scheme and to Pay the Scheme Costs in order to the
 24 Company, the Lenders and PFMSL falling into
 25 insolvency ..."

9

1 And that's for a number of reasons, my Lord.
 2 Principally relating to reputation (inaudible) and can
 3 I just ask your Lordship to cast your eye over 84
 4 (inaudible).
 5 SIR ANTHONY MANN: (inaudible).
 6 MR ISAACS: 85:
 7 "... prior to the Convening Hearing, the Company had
 8 estimated the total possible quantum of Scheme Claims
 9 subject tot he Scheme (after the application of set-off
 10 for all ... to be £3.7 million ..."
 11 The current figure is as of 16 July 3 (inaudible).
 12 SIR ANTHONY MANN: Is that (inaudible).
 13 MR ISAACS: (inaudible).
 14 SIR ANTHONY MANN: (inaudible).
 15 MR ISAACS: It is also based on a (inaudible) so it doesn't
 16 assume that every possible claim is 100% likely to
 17 succeed in full.
 18 SIR ANTHONY MANN: That's the tiering system that is
 19 described in the (inaudible).
 20 MR ISAACS: Yes, the claims (inaudible).
 21 SIR ANTHONY MANN: And so what is the assumption (inaudible)
 22 what is the -- what's the starting point (inaudible)
 23 number of loans which might (inaudible).
 24 MR ISAACS: I will take it in stages. Can I start with
 25 paragraph 88 (inaudible). The headline figure:

10

1 "... represents the product of running the
 2 4.2 million Scheme Creditors and [20 million] loans,
 3 dating back to 2007 through the Claims Methodology using
 4 data held by the Lenders and after setting off Scheme
 5 ... outstanding principal under Loans issued by the
 6 Lenders. Even with the activity of claims management
 7 companies, the Lenders would never expect Redress Claims
 8 of anything like this ... Nor, based on ... response
 9 rates, would the Parent expect the ... Ascertained
 10 Scheme Liabilities ... to approach anywhere near this
 11 figure."
 12 The answer to your question is that the claims
 13 methodology is applied to the entire -- the way the
 14 claims methodology works is (inaudible) is that there
 15 are different tiers which get different for the
 16 probabilities, depending on the company's understanding
 17 of the aspects related to (inaudible). Depending on the
 18 features of the loans, they are more or less likely to
 19 be successful (inaudible) effectively a weighted
 20 probability, depending on the presence or absence of
 21 certain factors.
 22 SIR ANTHONY MANN: So the starting point is that every
 23 possible borrower might have a claim --
 24 MR ISAACS: Yes.
 25 SIR ANTHONY MANN: -- and then you apply the criteria

11

1 (inaudible).
 2 MR ISAACS: Yes.
 3 SIR ANTHONY MANN: They fall out of the picture. Others
 4 (inaudible) that's how you end up with your (inaudible).
 5 MR ISAACS: Yes. I mean, bearing in mind, my Lord, and this
 6 is really the thrust of point that we make here, that
 7 that absolute headline figure goes back to 2007. So the
 8 chances of there being (inaudible) 2007 (inaudible).
 9 Indeed there may be no prospect of a lender from 2007
 10 being anywhere close to the scheme (inaudible).
 11 SIR ANTHONY MANN: So (inaudible).
 12 MR ISAACS: No, there isn't.
 13 SIR ANTHONY MANN: (inaudible).
 14 MR ISAACS: No.
 15 SIR ANTHONY MANN: Anybody who has a claim in 2007
 16 (inaudible).
 17 MR ISAACS: Yes, my Lord, though, again, that is a point,
 18 I believe, that was arrived at in consultation with the
 19 FCA (inaudible) treated in the same way.
 20 Paragraph 90.
 21 SIR ANTHONY MANN: Yes.
 22 MR ISAACS: "The Company advised Scheme Creditors in the
 23 Explanatory Statement that the Company's best reasonable
 24 estimate was that the Payment Percentage was likely be
 25 between 5% to 10% (corresponding to a Scheme Creditor

12

1 response rate of between 10% to 30%). Based on Claim
 2 Forms submitted to the Company as at the end of 7 July
 3 2021 the Payment Percentage is unlikely to exceed 6.6%.
 4 Accordingly, the Company's best reasonable estimate of
 5 the likely Payment Percentage ... is now between 5% and
 6 6.6%."

7 SIR ANTHONY MANN: (inaudible).
 8 MR ISAACS: Yes.
 9 SIR ANTHONY MANN: (inaudible) high proportion of these
 10 claims are now made through claims management companies
 11 (inaudible).
 12 MR ISAACS: Correct.
 13 SIR ANTHONY MANN: What's the typical percentage that the
 14 (inaudible)?
 15 MR ISAACS: I'm not sure it is in the evidence, my Lord.
 16 SIR ANTHONY MANN: (inaudible) I am absolutely certain of
 17 (inaudible).
 18 MR ISAACS: Yes, and I believe I can answer that question
 19 and the answer is 20 to 30%. I'll turn round to make
 20 sure —
 21 SIR ANTHONY MANN: Yes.
 22 MR ISAACS: This piece of paper says 25 to 30%.
 23 SIR ANTHONY MANN: Right. So on the assumption if the bulk
 24 of these claims were to make it through (inaudible).
 25 MR ISAACS: (inaudible).

13

1 SIR ANTHONY MANN: And these people (inaudible).
 2 MR ISAACS: No.
 3 SIR ANTHONY MANN: (inaudible).
 4 MR ISAACS: Yes. That's the reason that the claims
 5 companies work. That's the economics that they —
 6 SIR ANTHONY MANN: (inaudible).
 7 MR ISAACS: They aggregate, yes.
 8 SIR ANTHONY MANN: (inaudible) I don't know if there is
 9 a range but are claims (inaudible).
 10 MR ISAACS: Rarely, my Lord, several hundred (inaudible).
 11 SIR ANTHONY MANN: So a typical claim is several hundred
 12 pounds.
 13 MR ISAACS: I've answered that question, but I'll turn round
 14 and I'll get a piece of paper very soon. But I think
 15 typically between 500 and £1,000, something like that.
 16 (Pause)
 17 Yes, my Lord, that's correct.
 18 Paragraph 91, unless your Lordship has more
 19 questions?
 20 SIR ANTHONY MANN: No.
 21 MR ISAACS: "Neither the Parent nor PFHL is under any legal
 22 obligation financially to support the Lenders, or
 23 provide them with any funding to enable them to use
 24 their obligations."
 25 92. I have already dealt with.

14

1 93. It just makes good the numbering context:
 2 "The Parent commit £70 million ... represents around
 3 11% of its [current] market capitalisation."
 4 Paragraph 95 —
 5 SIR ANTHONY MANN: (inaudible).
 6 MR ISAACS: Yes, my Lord.
 7 SIR ANTHONY MANN: Again, I don't think you will (inaudible)
 8 claims company (inaudible) particularly interested in
 9 (inaudible) where is still an outstanding loan
 10 (inaudible).
 11 MR ISAACS: No, although my instructing solicitors have
 12 handed me a note which I said at the time I didn't
 13 understand the relevance of it, but, just reading it,
 14 my Lord, (inaudible) it says this:
 15 "The benefit of the scheme is that the creditors
 16 deal directly with the scheme. Claims process is made
 17 as easy as possible."
 18 Which is obviously right. What this doesn't say and
 19 it raises a questioning (inaudible) clarify is whether
 20 the claims management companies therefore have a role in
 21 the scheme in the way (inaudible).
 22 SIR ANTHONY MANN: (inaudible).
 23 MR ISAACS: But I don't know —
 24 SIR ANTHONY MANN: So far, I can see that it is designed
 25 (inaudible).

15

1 MR ISAACS: Yes.
 2 SIR ANTHONY MANN: (inaudible).
 3 MR ISAACS: No. I mean, the thrust of your Lordship's
 4 question, as I understand it, is what happened in the
 5 (inaudible).
 6 SIR ANTHONY MANN: (inaudible) I'm trying to get an overall
 7 picture. I know that your clients are not responsible
 8 for the fact that (inaudible).
 9 MR ISAACS: No.
 10 SIR ANTHONY MANN: But I am just wondering — I am just
 11 trying to get the dynamics of the scheme (inaudible) so
 12 far as I can. Presumably the claims company will be
 13 interested in the money coming out of the scheme
 14 (inaudible) claims companies are likely to be
 15 interested, so those (inaudible) claim is gross claim is
 16 worth less than the amount (inaudible) set-off in full
 17 (inaudible) claims companies processes (inaudible) I'm
 18 sort of musing (inaudible).
 19 MR ISAACS: No, I understand, my Lord.
 20 SIR ANTHONY MANN: (inaudible).
 21 MR ISAACS: 93 — did your Lordship get what I said about
 22 paragraphs 91 to 93?
 23 SIR ANTHONY MANN: (inaudible).
 24 MR ISAACS: 91, no legal obligation on the parent to
 25 support.

16

1 SIR ANTHONY MANN: Yes.
 2 MR ISAACS: 92, substantial contribution.
 3 SIR ANTHONY MANN: Oh, yes, the big portion (inaudible).
 4 MR ISAACS: Yes, that's it. 95, my Lord:
 5 "Due to the parent's ownership of [Vanquis Bank],
 6 the Group is subject to capital adequacy
 7 requirements" —
 8 SIR ANTHONY MANN: That's what places, you say, an effective
 9 (inaudible).
 10 MR ISAACS: Indeed, my Lord. That's paragraph —
 11 SIR ANTHONY MANN: That hasn't been challenged — I don't
 12 know quite how that will work, but that hasn't been
 13 challenged by the FCA so (inaudible).
 14 MR ISAACS: That's dealt with in a bit more detail in 97 and
 15 98, if we go through that. It sounds like your Lordship
 16 has already read it.
 17 SIR ANTHONY MANN: Let me just remind myself. That's just
 18 explaining the (inaudible).
 19 MR ISAACS: Yes, and the numbers, my Lord, in 98, explaining
 20 that the capital adequacy (inaudible) predicted to fall
 21 to a minimum £200,000 or thereabouts in January 2022
 22 before increasing again. That's point that
 23 your Lordship has put to me. That's the numbers behind
 24 (inaudible).
 25 Paragraph 100, my Lord:

17

1 "On Monday, 15 March 2021 (being the day that the
 2 Practice Statement Letter was issued and the Parent
 3 announced the FCA investigation), the Parent's share
 4 price fell 72.4 pence from its closing position of 261.6
 5 pence on Friday ..."
 6 Which was a fall of more than 27% and equated to a
 7 £184 million fall in the market capitalisation.
 8 SIR ANTHONY MANN: (inaudible).
 9 MR ISAACS: Exactly. That's why it's there.
 10 101, "Balance reduction agreements". Your Lordship
 11 is obviously on top of that. Would your Lordship like
 12 me to go through this section?
 13 SIR ANTHONY MANN: (inaudible).
 14 MR ISAACS: That's the intention, my Lord, and that was the
 15 concerns that the FCA expressed, which is what's the
 16 genesis of these (inaudible).
 17 SIR ANTHONY MANN: I understand the FCA letter, I don't have
 18 a problem with what they achieve (inaudible).
 19 MR ISAACS: Excuse me, my Lord. (Pause)
 20 Next section, my Lord, "Engagement with the FCA" at
 21 page 70, paragraph 123. We touched on this, but:
 22 "... the parent and PPC ... engaged extensively with
 23 FCA and its advisers on the design and development of
 24 the Scheme. This ... resulted in a number of amendments
 25 to the Scheme and early drafts ... Following the

18

1 Convening Hearing, the Group continued to change with
 2 the FCA on the Scheme, and the documents distributed to
 3 ... Creditors. This engagement culminated in a letter
 4 ... [in which] the FCA confirmed they had 'decided not
 5 to appear in court to oppose the sanction of the
 6 Scheme ..."
 7 Although they note and described their concerns.
 8 SIR ANTHONY MANN: (inaudible).
 9 MR ISAACS: It's not known by me, my Lord. I saw this
 10 (inaudible).
 11 SIR ANTHONY MANN: (inaudible).
 12 MR ISAACS: Section L is correspondence received from scheme
 13 creditors. You will know, again, from the A me go
 14 scheme (inaudible) dealt with in some detail.
 15 126:
 16 "The Company and the Group took a number of steps to
 17 make it as easy as possible for Scheme Creditors to
 18 raise questions or concerns ... steps included
 19 establishing the Scheme Telephone Hotline, Scheme Email
 20 Address and Scheme Postal Address to provide Scheme
 21 Creditors with easy access to the Company and an
 22 opportunity to ask the Company questions and make
 23 submissions about the [company] ... also took a number
 24 of steps to make the Scheme as clear and accessible to
 25 Scheme Creditors as possible. For [example], the Scheme

19

1 Website contained all of the Scheme documents, provided
 2 Scheme Creditors with updates ... summarised the steps
 3 that Scheme Creditors had to take, and set out a ...
 4 timeline ... also contained a "contact us" tab ...
 5 provided Scheme Creditors with details of the Scheme
 6 Telephone Hotline Scheme Email Address and Scheme Postal
 7 Address."
 8 At 128:
 9 "In addition, the Company:
 10 "Uploaded 75 'frequently asked questions' and
 11 responses ... to the ... Website."
 12 (inaudible) on the website and then they're listed.
 13 Over the page, at the bottom of page 73 —
 14 SIR ANTHONY MANN: (inaudible).
 15 MR ISAACS: Yes. At the bottom of page 73:
 16 "Between 17 May and 3 July the Scheme Videos were
 17 watched a total of [45,000—odd] times."
 18 (inaudible).
 19 Page — also published a number of advertisements of
 20 the scheme in the Sun, the Daily Mail and the Metro and
 21 on Facebook and Instagram (inaudible).
 22 SIR ANTHONY MANN: (inaudible).
 23 MR ISAACS: If your Lordship wishes.
 24 SIR ANTHONY MANN: (inaudible).
 25 MR ISAACS: I will just turn round. excuse me, my Lord.

20

1 (Pause)
 2 Yes, my Lord, there is one technical issue which is
 3 this, my Lord: there may be an issue with the quality of
 4 the audio because they are obviously not in the
 5 courtroom and they are dialling in remotely and it is
 6 possible that some of the transmission has not been as
 7 clear as it might be.
 8 SIR ANTHONY MANN: Then we get usual inaudible dot—dot—dot.
 9 You can only publish what has been transcribed.
 10 I understand that. Usually you expect (inaudible) but
 11 I'd like a transcript of this hearing.
 12 MR ISAACS: Yes, my Lord. My Lord, that's all I propose to
 13 say from that witness statement, unless your Lordship
 14 wishes me to go to further parts?
 15 SIR ANTHONY MANN: No.
 16 MR ISAACS: Thank you.
 17 Then —
 18 SIR ANTHONY MANN: Since we have transcribers, we should
 19 have the usual break for the transcribers.
 20 MR ISAACS: Yes, of course, I'm sorry.
 21 SIR ANTHONY MANN: What is your next point?
 22 MR ISAACS: I was proposing now to go on to the second
 23 section of my submissions, which is the scheme meeting.
 24 SIR ANTHONY MANN: Well, I think — let's just go on for
 25 another five minutes or so and then we'll give the

21

1 transcribers?
 2 MR ISAACS: It is a relatively short point. I was proposing
 3 to start with the chairman's report in the second
 4 bundle.
 5 SIR ANTHONY MANN: I have read this. The important thing is
 6 you have 400,000 (inaudible) anything else? You have
 7 also indicated the report (inaudible) means by which
 8 people were (inaudible) so do you need to make me to any
 9 of that (inaudible).
 10 MR ISAACS: The only other thing I was going to actually go
 11 through what was set at the meeting but your Lordship
 12 has seen the (inaudible).
 13 SIR ANTHONY MANN: Yes (inaudible).
 14 MR ISAACS: No.
 15 SIR ANTHONY MANN: (inaudible) really need to see.
 16 MR ISAACS: When I say (inaudible).
 17 SIR ANTHONY MANN: I have seen what the (inaudible).
 18 MR ISAACS: I am grateful. Then I can just see if there's
 19 anything else I need in that section. (Pause)
 20 That's all I was proposing to do on that section,
 21 my Lord, to go through that report.
 22 Then the third section of my submissions, which is
 23 potentially quite a detailed one, is all about the
 24 detail, is to go through the convening order and to
 25 satisfy your Lordship that each of the paragraphs of the

22

1 convening order has been complied with.
 2 SIR ANTHONY MANN: Yes (inaudible).
 3 MR ISAACS: Yes.
 4 SIR ANTHONY MANN: (inaudible).
 5 MR ISAACS: I am grateful.
 6 SIR ANTHONY MANN: I'll break until 11.45.
 7 (11.36 am)
 8 (Short Break)
 9 (11.45 am)
 10 SIR ANTHONY MANN: I'm told there is a problem with your
 11 hearing some of what is going on; is that correct?
 12 MR HINKS: It's just every now and then, my Lord,
 13 particularly when you move away from the mic, it's
 14 difficult for me to hear.
 15 SIR ANTHONY MANN: Is it me or is it Mr Isaacs?
 16 MR HINKS: It's primarily my Lord.
 17 SIR ANTHONY MANN: Is it? I can't move much closer. I'll
 18 try to make sure you can hear. You consider you have
 19 been disadvantaged or have you managed to fill in the
 20 blanks?
 21 MR HINKS: I've managed to fill in the blanks.
 22 SIR ANTHONY MANN: Right. We'll do what we can. Thank you
 23 for letting us know, Mr Hinks. Right.
 24 MR HINKS: I am grateful.
 25 MR ISAACS: I hope my answers to your Lordship's questions

23

1 are responsive which (inaudible) the blanks can be
 2 filled in.
 3 My Lord, there were two points from this morning
 4 that I'd like to pick up now, if I may.
 5 SIR ANTHONY MANN: Yes.
 6 MR ISAACS: Your Lordship first put to me a suggestion that
 7 if your Lordship were minded to sanction the scheme, it
 8 might be on a conditional basis, the condition being
 9 that the PRAs were executed. I have taken instructions
 10 on that and I have been told that that would be
 11 extremely unsatisfactory from the point of view of the
 12 group for a commercial reason, which is that these are
 13 commercial negotiations and that would put a great deal
 14 of bargaining power in the possession of the purchasers
 15 vis—à—vis the company, and it would put the company at
 16 a significant disadvantage.
 17 I have also been told it, in the context of one of
 18 them, which is in the process of being dealt with now,
 19 that events have happen during the course of the
 20 hearing, which suggest that your Lordship's comments
 21 have been heard and an increased demand has been made by
 22 one of the debt purchasers.
 23 Now, that's a sign of what is to come, but, even
 24 absent that, and I don't (inaudible), even absent that,
 25 my Lord, it's clearly the case that what you will

24

1 effectively do is the give the debt purchasers a ransom
 2 advantage because they could, subject to their
 3 obligations to — which are set out in the comfort
 4 letters , they could push as hard as they could
 5 (inaudible) come to terms with them we can't actually
 6 get the scheme sanctioned.
 7 SIR ANTHONY MANN: Well, how do I — at the moment the
 8 scheme is put on the basis that (inaudible) agreement
 9 will be made. What happens if the agreement is not made
 10 (inaudible). What happens if the agreement is not
 11 reached, whether because of my intervention or not?
 12 MR ISAACS: Well, my Lord. This is a scheme where
 13 your Lordship obviously has a very broad discretion .
 14 There are a very substantial number of issues to be
 15 weighed in the balance. So far as the PRAs are
 16 concerned, that is one of many, many considerations —
 17 SIR ANTHONY MANN: So the short answer to my question is
 18 that they don't (inaudible) the lenders who are going to
 19 be assigned if you don't manage to do an agreement with
 20 them (inaudible) then they simply lose out.
 21 MR ISAACS: No, my Lord, that's not the case.
 22 SIR ANTHONY MANN: Then what's the answer to my question?
 23 MR ISAACS: If your Lordship can go to the scheme, my Lord,
 24 please.
 25 SIR ANTHONY MANN: Yes.

25

1 MR ISAACS: It's S878.
 2 SIR ANTHONY MANN: In bundle?
 3 MR ISAACS: In the second bundle. It's 2.1, my Lord. Does
 4 your Lordship have that?
 5 SIR ANTHONY MANN: (inaudible).
 6 MR ISAACS: Is that the S bundle, my Lord? Does it say
 7 (inaudible)?
 8 SIR ANTHONY MANN: My bundle 2 stops at S8.1.
 9 MR ISAACS: Oh, I'm sorry. Your Lordship must have
 10 a bundle 3 then.
 11 SIR ANTHONY MANN: I do.
 12 MR ISAACS: I don't.
 13 SIR ANTHONY MANN: Oh, right. Right. My bundle 3 looks
 14 like that.
 15 MR ISAACS: Mine's double-sided.
 16 SIR ANTHONY MANN: Yes.
 17 MR ISAACS: 3.1, my Lord:
 18 "All Scheme Creditors against the Lenders shall be
 19 forever released and discharged by the Scheme on the
 20 implementation date, save to the extent required to
 21 preserve any right to the Scheme Creditor to assert
 22 rights of equitable set-off or similar rights against
 23 the debt purchaser in respect of any scheme claim
 24 submitted by the claims division."
 25 So, coming back to your Lordship's point earlier ,

26

1 where your Lordship corrected me about taking subject to
 2 set-off rights, the set-off rights transfer across. And
 3 the significance of this point, my Lord, is that the
 4 PRAs, although they have taken a great deal of time and
 5 money and effort and a lot of paper, they're an add-on
 6 and they were put in at the suggestion or in
 7 communication at the encouragement of the FCA but they
 8 are far from being an essential part of the scheme, they
 9 are at the margins, and the company was willing to go
 10 along with it to keep the FCA happy, but they're
 11 completely unnecessary. I would submit — even if they
 12 didn't exist at all , I would submit this is a scheme
 13 which should be sanctioned, and this is just an extra
 14 protection and where we are at moment is that we have
 15 extra protection for a substantial portion of the scheme
 16 creditors and it looks very likely , and your Lordship
 17 has evidence, that we're going to have projection for
 18 all of them and we're very close. But the real concern
 19 is that if your Lordship makes the order conditional in
 20 the way your Lordship suggested, the debt purchasers can
 21 negotiate extremely hard and effectively refuse and the
 22 group companies will be in an impossible position.
 23 SIR ANTHONY MANN: But then it doesn't matter because the
 24 creditors are (inaudible) protection of (inaudible)
 25 I suppose what doesn't happen is that the debt transfer

27

1 companies are bound by the (inaudible) scheme. If
 2 they're not bound by the finding of the scheme, then
 3 they're not — then they can't be released at the end of
 4 the six months.
 5 MR ISAACS: No, but it's the same situation as it would be
 6 in the real world that the assignments having taken
 7 place and it's outside of the scheme, it's not made any
 8 worse by the scheme, if that's your Lordship's concern.
 9 SIR ANTHONY MANN: So just thinking this through for the
 10 moment. If you have — let's say one of the
 11 (inaudible), a creditor — one of the customers lodges
 12 a scheme claim, it's found that they have a right of
 13 set-off, the scheme — the transferee company is not
 14 actually bound by that.
 15 MR ISAACS: No.
 16 SIR ANTHONY MANN: Because they are party to the arrangement
 17 so they're not bound by that. If they are not bound by
 18 it , they also — I suppose they can't take the benefit
 19 of the release (inaudible) funds, so the customer
 20 (inaudible). That works, does it?
 21 MR ISAACS: That's my understanding.
 22 SIR ANTHONY MANN: (inaudible).
 23 MR ISAACS: Yes, my Lord. I mean, the difficulty, if I may
 24 put it this way, is these PRAs have consumed far too
 25 much paper which gives them (inaudible) is

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1 disproportionate because they don't need to be
 2 (inaudible). The fundamental aspect of the scheme is
 3 the creditors are so much better off than they would be
 4 otherwise, and this is another bit of icing on the cake
 5 which was prompted by the FCA and the company was
 6 willing to go along with it.
 7 SIR ANTHONY MANN: But the FCA is obviously concerned
 8 because it's one of the points in their letter
 9 (inaudible).
 10 MR ISAACS: There are lots of points (inaudible).
 11 SIR ANTHONY MANN: It's one of their points --
 12 MR ISAACS: It is.
 13 SIR ANTHONY MANN: Yes, I see.
 14 MR ISAACS: So the other point, my Lord, that your Lordship
 15 raised with me that I said I wouldn't forget, and
 16 I almost did, is what happens in the interim in relation
 17 to set-offs and is there going to be (inaudible)
 18 six months how is the scheme supposed to work in that
 19 situation? And the answer to that is also provided in
 20 the scheme document page or two before the page we're on
 21 at the moment. Your Lordship looks at clause 2.6, which
 22 is at 876, it says this:
 23 "To the extent of any Post Implementation Date
 24 Payments are made by a Scheme Claimant to a Lender and
 25 such Post Implementation Date Payments are greater than

29

1 the Remaining Outstanding Loan Balance owed by that
 2 Scheme Creditor ... for the purpose of this Clause ...
 3 the Parent shall repay the Refund Amount to the Scheme
 4 Claimant in accordance with Clause 5.1.2."
 5 SIR ANTHONY MANN: That deals with the (inaudible) but it
 6 doesn't deal with practicalities of what happens during
 7 the six months (inaudible) for example, for monies when
 8 one doesn't (inaudible).
 9 MR ISAACS: Oh, well, my understanding is that is not going
 10 to happen. Let me just turn round but I don't think
 11 (inaudible). Can I please turn round just to confirm
 12 that? (Pause)
 13 No, that's correct. That's not happening
 14 (inaudible).
 15 SIR ANTHONY MANN: So what activity -- what recover activity
 16 is going to be going on during the six-month period of
 17 the scheme?
 18 MR ISAACS: Well, again, I can turn round and find out the
 19 answer. I don't know the answer to that, but I would
 20 imagine things like correspondence, the correspondence
 21 that's involved in, if there is such a thing, in terms
 22 of recovering monies in the ordinary course,
 23 communications with customers who are paying in the
 24 ordinary course. There is a machine involved in
 25 collecting very substantial amounts of money which --

30

1 most of which doesn't involve (inaudible) courts, and
 2 that's the recovery exercise. That's where there are
 3 people responsible for collecting the loans.
 4 SIR ANTHONY MANN: Is it planned that (inaudible) "This is
 5 what you owe us, but subject to the rights which you may
 6 have under the scheme"? What I'm wondering is Mr Smith,
 7 who has been pursued for £97, which he undoubtedly
 8 borrowed, turns out that he -- may or may not want to
 9 make himself a scheme creditor under the scheme. But,
 10 first of all, if he makes a claim under the scheme,
 11 then, what, you wait to see how much he (inaudible) or
 12 you pursue him further? These are practicalities which
 13 in a sense don't concern you, but I do want to
 14 understand the (inaudible).
 15 MR ISAACS: Yes, my Lord is using the language of the
 16 (inaudible), which I understand, and that's a language
 17 which (inaudible). My understanding, again, I can check
 18 this, is there isn't (inaudible) there's the ongoing
 19 business of collecting the loans but not in the sense of
 20 going to court. A lot of these --
 21 SIR ANTHONY MANN: (inaudible) the fact is, Mr Isaacs, the
 22 insolvency or what's going to happen to the (inaudible)
 23 an awful lot of money is going to have to be spent
 24 mainly getting in these loans.
 25 MR ISAACS: Yes.

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1 SIR ANTHONY MANN: And I'm wondering what it's going to be
 2 spent on in the six months of the scheme when there's
 3 uncertainty in relation to lots of individuals
 4 creditors, but some of them you are going to say you
 5 don't (inaudible) lots of the others, and I am wondering
 6 what -- I will use the word "pursue" because there are
 7 various ways in which it can be done --
 8 MR ISAACS: Yes.
 9 SIR ANTHONY MANN: (inaudible) letter of demand (inaudible)
 10 and I'm wondering what's going to be happening in
 11 relation to them? What's this money going to see spent
 12 on?
 13 MR ISAACS: My Lord, I will take instructions on that.
 14 I would say that the amounts are substantial, but, of
 15 course, your Lordship has in mind that in theory at
 16 least there are -- I think it's 4.2 million scheme
 17 creditors. So if you don't have to spend very much
 18 money on any of them to get to (inaudible) but maybe
 19 I can take instructions. I think your Lordship's -- as
 20 I understand it, your Lordship's concern is, well, are
 21 the creditors going to be told about what is going on in
 22 the scheme, are they going to be told they might have to
 23 settle (inaudible), for example. I mean, obviously, you
 24 know, your Lordship has seen the evidence. There has
 25 been a massive campaign through many, many channels.

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1 SIR ANTHONY MANN: I wasn't thinking of that, but that
 2 question does actually arise in my trying to understand
 3 the position. I'm trying to understand what the
 4 position is going to be in six months. It is avowedly
 5 the company's intent to carry on a process of debt
 6 recover. The company is doing that.

7 MR ISAACS: Yes.

8 SIR ANTHONY MANN: And these are people whose debts have not
 9 been assigned.

10 MR ISAACS: Yes.

11 SIR ANTHONY MANN: These are just -- I don't know how many
 12 of those (inaudible).

13 MR ISAACS: I suspect, my Lord, the best thing to do, rather
 14 than me flapping around, because I don't have this in
 15 the evidence --

16 SIR ANTHONY MANN: Of course.

17 MR ISAACS: -- is for me to ask those behind me to write it
 18 down very briefly so I can speak on instructions and not
 19 state the position because I don't want to guess and
 20 I don't have these details.

21 SIR ANTHONY MANN: It is obviously the same question
 22 (inaudible) in relation to the debt transfer companies.
 23 That's a different (inaudible).

24 MR ISAACS: Yes.

25 SIR ANTHONY MANN: Well, I'd be interested to know how many

33

1 of these debts are left (inaudible) and transferred out
 2 (inaudible) very few left, one wonders what the money is
 3 going to be spent on (inaudible).

4 MR ISAACS: There are a number of customers who are left I'm
 5 told at the moment is 178,000. My Lord, of the 178,000,
 6 around 125 are current customers, in the sense currently
 7 paying, which leaves the balance of about 50,000--some
 8 customers which are in arrears.

9 What I haven't answered and what I don't yet know
 10 and I would like to take instructions, if I may, is the
 11 answer to your Lordship's question as to exactly what is
 12 being done in the management --

13 SIR ANTHONY MANN: What is going to be done.

14 MR ISAACS: Going to be done, yes, absolutely, because
 15 your Lordship has seen the figures and been told about
 16 it (inaudible). May I, again, on the basis I don't
 17 forget, come back to that next --

18 SIR ANTHONY MANN: Yes. And I'd like to know what the
 19 amount of the debt is that is left, let alone the number
 20 of customers, just the amount of debt. Ballpark figures
 21 will do.

22 MR ISAACS: That's the debt that's not been assigned?

23 SIR ANTHONY MANN: Yes.

24 MR ISAACS: I believe that's in the evidence, but I'll come
 25 back to that, my Lord. (inaudible).

34

1 Okay, my Lord. The next point I planned to take
 2 your Lordship through was the compliance with the order.
 3 So that's in tab 1, A1, and I was proposing to go
 4 through each of the paragraphs of the order and explain
 5 the compliance by reference initially by reference to
 6 the witness statement of Mr Le May, which is at
 7 (inaudible), also in this bundle. It starts at
 8 page S87, paragraph 10.

9 SIR ANTHONY MANN: Yes.

10 MR ISAACS: Paragraphs 1, 2 and 3 of the convening order.
 11 That relates to the convening and conduct of the
 12 meeting, as addressed in a separate witness statement.
 13 That's his third witness statement which effectively
 14 goes through the (inaudible).

15 Paragraph 4 of the convening order requires the
 16 company to make available on a website a copies of the
 17 rules, explanatory statement, notice of the meeting, the
 18 claim form, and it is explained at paragraph 10 that the
 19 company had uploaded the various documents to the scheme
 20 website. It is also explained, paragraph -- 12, I beg
 21 your pardon.

22 It is also explained overleaf that there was
 23 a slight delay in relation to the claim form. That is
 24 paragraph 14 where it said, three lines down:
 25 "... the Claim Form was still being finalised as of

35

1 4 May ..."

2 It was finalised in mid-May, on 17 May being the
 3 date on which the portal opened:

4 "... the Company uploaded ... a revised version of
 5 the Scheme Documents (including the Claim Form), and ...
 6 the Claim Form on a standalone basis ..."

7 SIR ANTHONY MANN: (inaudible) in amended form.

8 MR ISAACS: Yes.

9 SIR ANTHONY MANN: (inaudible) have needed a claim form that
 10 (inaudible).

11 MR ISAACS: Paragraph 5 and paragraph 6 relates to the
 12 sending and the content of the so-called meeting at
 13 advertisements which is defined paragraph 17 and the
 14 requirements is set out in paragraph 17 and
 15 paragraph 18.

16 If I can pick that up in paragraph 22(c), which is
 17 on page 92, across 17 and 18 May 2021 Paragon sent the
 18 meeting advertisement to 1.3 --

19 SIR ANTHONY MANN: Where are you?

20 MR ISAACS: Sorry, my Lord, S92, subparagraph (c), the first
 21 line:

22 "I understand from the company that across 17 ...
 23 and 18 May Paragon sent the Meeting Advertisement to
 24 [1.3 million] ... creditors. Following this, Paragon
 25 received approximately [57,000] 'bounce-backs' or 'email

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1 not delivered' ... After careful review ... Experian
 2 were able to provide corrected email address for
 3 approximately [2,500] Bounce—Back Creditors and
 4 confirmed the email addresses for a further
 5 [18,000—odd]... given that this ... exercise was only
 6 completed shortly before Paragon commenced distribution
 7 of the SES [supplementary explanatory estimate
 8 statement] Letter to Email Creditors, Paragon were
 9 unable to directly send an Email Meeting [advert] to the
 10 [about] 20,500 Bounce—Back Creditors for whom Experian
 11 were able to confirm email addresses ... The result of
 12 this is that 95.9% of Email Creditors received a copy of
 13 the Meeting [advert] by no later than 18 May ... being
 14 over eight weeks before the Scheme Meeting ... with the
 15 Company unsuccessful in its attempts to deliver a
 16 personalised Meeting [advert] to [around] ... (4.1%) of
 17 its Email Creditors ... "

18 The matters are addressed below.
 19 23 so far as distribution of Meeting Advertisements
 20 to the Postal Creditors is concerned, subparagraph (b)
 21 over the page, distribution commenced on the 17th and
 22 completed on the 21st. 2.7 million—odd copies were
 23 posted of which 77,000 were returned or not delivered.
 24 The result is approximately 97.8% Postal Creditors
 25 received a copy by no later than 28 May with at least

1 98% of these receiving the advert as early as 26 May
 2 being over seven weeks before the meeting with the
 3 company unsuccessful in attempting to deliver the
 4 personalised advert to approximately 2.2% of its
 5 creditors .
 6 Again, that's addressed in paragraph 32, which I'll
 7 come to.

8 SIR ANTHONY MANN: Just pausing for a moment. Were the
 9 bounce—back email creditors (inaudible) will they have
 10 received — would they have received a postal
 11 (inaudible)?

12 MR ISAACS: Yes, that's paragraph 32 (inaudible).
 13 SIR ANTHONY MANN: (inaudible).
 14 MR ISAACS: Yes, quite. Paragraph 24:
 15 " ... pursuant to paragraph 6 of the Convening Order,
 16 the Meeting Advertisement was required to ... inform
 17 Scheme Creditors that the Scheme Document is available
 18 in full on the Scheme Website and that the Company will
 19 post, free of charge [to anyone who contacted them].
 20 The company had received 18 such requests. In each
 21 case, the Company posted physical copies to ... the
 22 requesting Scheme Creditor by first—class post on the
 23 next working day."
 24 Overleaf, paragraph 26, newspaper adverts placed in
 25 the Metro, Daily Mail and The Sun on 13 May.

1 Paragraph 28, at the bottom of the page:
 2 "The company also supplemented the Newspaper
 3 Advertisements with [adverts] ... on three very
 4 prominent social media platforms, namely Facebook,
 5 Instagram and Twitter."
 6 Paragraph 31:
 7 " ... despite the Company's best efforts, it was
 8 unable to distribute a personalised Meeting
 9 Advertisement in the form of a Postal Meeting
 10 Advertisement or Email Meeting Advertisement to
 11 approximately 3.75% of its Scheme Creditors. This is
 12 likely to be in large part because such Scheme Creditors
 13 would have been customers of the Lenders over a decade
 14 ago and would not have had any further contact with the
 15 Company since that period."
 16 32:
 17 "The Company believes that the interests of Scheme
 18 Creditors who did not receive direct communications with
 19 respect to the Scheme Meeting have not been materially
 20 disadvantaged, given that the Company published notice
 21 of the Scheme Meeting:
 22 "(a) in various major national newspapers ...;
 23 "(b) on three very prominent social media
 24 platform ...; and
 25 (c) on the Scheme Website ..."

1 33:
 2 "Indeed, the reason why the Company incurred the
 3 additional expense of distributing notices ... in
 4 a variety of ways ... was to ensure that Scheme
 5 Creditors who were not personally contactable could
 6 still receive notice of the Scheme Meeting ...
 7 I understand from the Company that 507 Scheme Creditors
 8 who did not personally receive a copy of the Email
 9 Meeting Advertisement or Postal meeting Advertisement
 10 have voted on the Scheme."
 11 34:
 12 " ... in accordance with paragraph 8 of the Convening
 13 Order, the Company did not distribute the Meeting
 14 Advertisements or any further communications relating to
 15 the Scheme to Excluded Creditors ..."
 16 They were creditors who, for example, had expressed
 17 a preference not to receive (inaudible) communications.
 18 "Paragraph 9 of the Convening Order", down the page,
 19 paragraph 36:
 20 " ... contemplated by paragraph 9 of the Convening
 21 Order, the Company made certain updates to the Scheme
 22 Document."
 23 Next page:
 24 " ... many of the changes relate to the correction of
 25 minor typographical errors, insertion of dates and

1 refining of the drafting ... In addition:
 2 "(a) following the FCA's appearance ... at the
 3 Convening Hearing, the Scheme Document was updated to
 4 provide Scheme Creditors with a brief overview of the
 5 main concerns raised by the FCA ...; and
 6 "(b) the company made some updates to the Scheme
 7 process flow chart ... and the Claims Method flow
 8 chart ..."
 9 Paragraph 38, which is the supplemental explanatory
 10 statement:
 11 "On 21 June ... the Company issued a supplemental
 12 explanatory statement ... to update ... Creditors on
 13 certain developments that had taken place with respect
 14 to the Scheme and the Group since the Convening Hearing
 15 and the publication of the Scheme Document on the Scheme
 16 Website."
 17 Obviously this was done out of an abundance of
 18 caution, in particular having regard to the decision of
 19 (inaudible) and it covered the following matters.
 20 Firstly, the closure of the lender's business.
 21 Secondly, why the scheme is different to the Amigo
 22 scheme. Following the court's refusal to sanction the
 23 Amigo scheme, the company considered it would be helpful
 24 to explain to scheme creditors why the key concerns
 25 raised in respect of the Amigo scheme didn't apply. The

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1 SES explained:
 2 "(i) unlike the Amigo Scheme, where after the
 3 implementation of the Scheme Amigo intended to carry on
 4 lending, PPC would be closing its business permanently;
 5 and (ii) unlike in the case of Amigo where there was
 6 expected to be material future value for Amigo's
 7 shareholders after the sanction ... PPC is not expected
 8 to generate any value ..."
 9 It also addressed by the lenders will commence
 10 insolvency proceedings if the scheme is not approved,
 11 why certain unsecured creditors expected to be paid in
 12 full, review by EY, why PFG is providing £50 million,
 13 the additional contributions to be made to the scheme,
 14 re-appointment of customer advocate and an update on the
 15 balance production agreements, and I have dealt with
 16 (inaudible), which I'll come to.
 17 Distribution of SES scheme creditors, that's
 18 paragraph 39:
 19 "... the Company sent to Scheme Creditors
 20 a personalised letter which notified them of key updates
 21 in relation to the Scheme ... and encouraged them to
 22 visit the Scheme Website for further information ... the
 23 Company distributed the SES Letter by email to Email
 24 Creditors ... and by post to Postal Creditors ..."
 25 Paragraph 40:

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1 "The Company engaged Paragon to send the SES Letter
 2 to all Email Creditors ..."
 3 Which it duly did across 23, 25 and
 4 29(inaudible) June. The SES letter was delivered by
 5 email to 1.26 million people — or to Email Creditors.
 6 Distribution of SES letter to postal creditors
 7 commenced on the 25th and was completed by 29 June.
 8 This required the company to post approximately
 9 2.5 million copies, which, together with distribution of
 10 the postal meeting advert, cost approximately
 11 £3.8 million.
 12 In addition to posting and emailing the SES letter
 13 to scheme creditors, the company placed adverts in the
 14 Metro, the Daily Mail and The Sun notifying the scheme
 15 creditors of the(inaudible) updates being made and how
 16 they could obtain further information in respect of the
 17 same. The company supplemented the SES newspaper advert
 18 by placing adverts on Facebook, Instagram and Twitter.
 19 SIR ANTHONY MANN: So where do I see the bounce-back email
 20 (inaudible)?
 21 MR ISAACS: My Lord, I thought I had read that, but going
 22 through it I thought the answer was in paragraph 32 but
 23 it isn't, so it appears that we have to rely on the
 24 other channels of communication, the adverts and
 25 Facebook and Instagram.

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1 SIR ANTHONY MANN: But the email creditors (inaudible) were
 2 not people (inaudible).
 3 MR ISAACS: Again, I think it is worth checking that but,
 4 I mean, there are a lot of them, so I dare say
 5 (inaudible) but I'll just check that. (Pause)
 6 The remaining paragraphs of the convening order,
 7 my Lord, are addressed in Mr Le May's third witness
 8 statement, which is at tab E1, which is probably in the
 9 third bundle, page 1089.
 10 SIR ANTHONY MANN: Yes.
 11 MR ISAACS: Paragraphs 11 and 12 of the convening order:
 12 "In accordance with paragraph 11 of the Convening
 13 Order, Scheme Creditors wishing to vote at the Scheme
 14 Meeting are entitled to:
 15 "Attend the Scheme Meeting and vote in person; or
 16 "appoint the Chairman or a third party as
 17 a proxy ..."
 18 SIR ANTHONY MANN: This is all a formality (inaudible).
 19 MR ISAACS: Yes, my Lord.
 20 SIR ANTHONY MANN: (inaudible).
 21 MR ISAACS: I am grateful.
 22 That's 11 and 12, 13, 15, 16, 17 and 18, yes.
 23 My Lord, that concludes (inaudible) order. That
 24 concludes that section of my submissions, my Lord.
 25 So I now turn to the fourth section, which is the

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1 reasons why the scheme should be sanctioned and I do
2 that, my Lord, by reference to the four elements of the
3 test which are set out in (inaudible) communication
4 number 2, Mr David Richards, (inaudible) by reference to
5 (inaudible) judgment of Mr Justice (inaudible).

6 What I propose to do, my Lord, there are a lot of
7 authorities in the bundle. I propose to give
8 your Lordship the references but only turn up the cases
9 (inaudible). Authorities bundle 6, page 79. I am not
10 proposing to turn it up, my Lord.

11 SIR ANTHONY MANN: (inaudible). You mean tab 6?

12 MR ISAACS: Yes, one authorities bundle.

13 SIR ANTHONY MANN: There are two authorities bundle.

14 MR ISAACS: Ah, your Lordship has two authorities bundles.

15 There are 32 authorities in there. This one is at
16 tab 6. The position was summarised in the recent
17 case —

18 SIR ANTHONY MANN: Well, I need your skeleton (inaudible).

19 MR ISAACS: Yes. Paragraph 61, my Lord. At the bottom
20 there is a reference to (inaudible) and the skeleton
21 doesn't have the authorities' bundle references so I'll
22 give them to your Lordship (inaudible) 33 and it sets
23 out effectively that there are four tests: has there
24 been compliance with the statutory requirements?

25 SIR ANTHONY MANN: I have read this.

45

1 MR ISAACS: I am grateful. I was proposing to go through
2 each of them. Has there been compliance with the
3 statutory requirements? Number 1. Your Lordship has
4 seen the requisite statutory majorities were obtained at
5 the meeting and also that the scheme meeting was
6 summoned and convened in accordance with the convening
7 order.

8 The class of scheme creditors was properly
9 constituted. (inaudible) considered detailed
10 submissions on class (inaudible)(inaudible) concluded
11 a single scheme meeting was appropriate.

12 And the convening judgment contains careful analysis
13 of class issues and, in those circumstances, I will
14 submit we should follow the guidance in (inaudible),
15 which is class issues not be (inaudible).

16 So I will submit there has been compliance with the
17 statutory requirements.

18 SIR ANTHONY MANN: (inaudible) with arise out of one of the
19 cases (inaudible) apart from the Ombudsman (inaudible).

20 MR ISAACS: No.

21 SIR ANTHONY MANN: (inaudible).

22 MR ISAACS: No. And your Lordship is aware that the FCA is
23 represented by leading counsel before

24 Sir Alastair Norris when the principal issue was class
25 determination, and they didn't suggest that any of their

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1 concerns gave rise to a class issue. Indeed, no one has
2 suggested any (inaudible) class issue.

3 Was the class fairly represented and did the
4 majority act in a bona fide manner and proper purposes
5 when voting? I would submit there is nothing to suggest
6 the scheme creditors acted other than bona fide.

7 A total of 420,000 scheme creditors cast a vote at
8 the meeting by post and by proxy. In absolute terms,
9 that's a very large number. I think my learned junior
10 who draft (inaudible)(inaudible) survived says this is
11 probably the largest turnout of a scheme arrangement in
12 recent (inaudible)(inaudible) history. And there's
13 a reference to Equitable Life, which might be an
14 exception, but Mr Spencer and I and others were involved
15 in that case and this is considered the largest.
16 (inaudible) ever been nearly as big and, of course,
17 that's one of the bonuses of technology because it was
18 a virtual meeting (inaudible) country. So it was
19 a vast, absolute turnout.

20 In terms of relative turnout, I took your Lordship
21 to the figures showing that there were potentially
22 4.2 million scheme creditors with claims valued at
23 possibly 3.8 billion, but that's a theoretical number,
24 it's not expected anywhere near that number will appear.
25 So on the basis of the reasonable estimate that between

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1 10 and 30% of the scheme creditors would appear, the
2 turnout of 420,000 is actually a high proportion
3 (inaudible) of the scheme.

4 Insofar as any scheme creditors did not cast a vote,
5 that was not a consequence of any inadequate
6 notification by the company. The vast majority of
7 scheme creditors were notified directly, I'm just taking
8 your Lordship to that evidence, and there was also
9 extensive advertising.

10 In any event, a low turnout is not a reason to
11 refuse to sanction a scheme. The authority for that is
12 Instant Cash Loans, authorities 16, and paragraph 24.
13 So, I submit, my Lord, the answer to the second question
14 is also "yes".

15 The third question: is the scheme one that an
16 intelligent and honest man, acting in respect of his
17 interests, might reasonably (inaudible)? The answer to
18 that is "yes". The starting point is the overwhelming
19 approval of creditors (inaudible) scheme meeting. That
20 being so, the court should be slow to depart from the
21 vote, absent some blot on the scheme. In paragraph 74
22 we have set out the English and Scottish case that is
23 authority for that proposition.

24 I submit that the court should be slow to conclude
25 that the scheme, approved by 400,000—odd people, with

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1 a majority of 98% in number and value, is not one that
 2 an intelligent and honest man, acting in respect of his
 3 interests, might reasonably approve.

4 The adequacy of the information provided to
 5 creditors is also relevant in deciding what weight
 6 should be given to the majority vote, and that was the
 7 central issue in the (inaudible) scheme and Amigo scheme
 8 case, at paragraphs 132 to 148, where Mr Justice Miles
 9 refused to sanction the scheme because the explanatory
 10 statement was deficient in numerous respects. In that
 11 case, as your Lordship knows, the FCA criticised the
 12 explanatory statement and those criticisms were accepted
 13 by the learned judge.

14 In the present case, by contrast, great care has
 15 been taken to ensure that the explanatory statement and
 16 supplemental explanatory statement strike the right
 17 balance between the needs to provide full and frank
 18 disclosure of all material facts and the need to ensure
 19 that the information is provided in a form which is
 20 comprehensible to retail customers. Part of the purpose
 21 of circulating a supplemental explanatory statement was
 22 to ensure that the information provided to scheme
 23 creditors was fully compliant with the guidelines laid
 24 down in the scheme.

25 It is submitted that the explanatory statement and

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1 the supplemental explanatory statement satisfied the
 2 test laid down in paragraph 14 of the practice
 3 statement, which is authorities 2, which is also set out
 4 in the Sunbird judgment, which I believe is in the
 5 skeleton. Yes, it is paragraph 78. And I emphasise, in
 6 particular, explanatory statements should be in a form
 7 and style appropriate to the circumstances of the case,
 8 including the nature of the creditor constituency and
 9 should be as concise as the circumstances permit. It is
 10 not suggested by the FCA that there's any deficiency in
 11 the explanatory statement or in the supplemental
 12 explanatory statement.

13 Apart from the weight to be given to the majority
 14 vote, it is submitted that there are two other reasons
 15 why the scheme (inaudible)(inaudible) that intelligent
 16 and honest man, acting in respect of his interest, might
 17 reasonably approve.

18 The first is that, absent the scheme, the scheme
 19 creditors would receive nothing.

20 SIR ANTHONY MANN: (inaudible).

21 MR ISAACS: The second, my Lord, which I'm sure
 22 your Lordship also has, is that the scheme represents
 23 a pure benefit to the scheme creditors at the expense of
 24 the parent because there is the pro rata share of the
 25 (inaudible) compensation fund.

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1 I would like to address another point which was
 2 raised (inaudible) which is the negotiation point
 3 (inaudible). It is fair to say that the value of the
 4 Compensation Fund and the terms of the scheme have not
 5 been negotiated with the scheme creditors as at
 6 paragraph (inaudible) authorities bundle 31,
 7 Mr Justice Miles suggested that this is relevant to the
 8 weight the court should give to the vote at the scheme
 9 meeting.

10 However, in this case, in contrast to the Amigo
 11 scheme, it is very difficult to see how the
 12 Compensation Fund could be the subject to meaningful
 13 negotiation. That's because the Compensation Fund in
 14 this case is in the nature of a gift from the parent to
 15 the scheme creditors. The scheme creditors would not
 16 have a viable bargaining position to ask for more than
 17 £50 million, since the alternative for that is to
 18 receive nothing. (inaudible) comparison and contrast
 19 where the relevant lender intended to carry on business
 20 as a going concern for the benefit of the shareholders,
 21 the shareholders would have had the motivation to
 22 increase the size of the Compensation Fund if proper
 23 negotiations had taken place. Furthermore —

24 SIR ANTHONY MANN: Well, it was not being said in Amigo,
 25 "You will get nothing".

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1 MR ISAACS: It wasn't being said, my Lord.

2 SIR ANTHONY MANN: (inaudible).

3 MR ISAACS: The court didn't accept that.

4 SIR ANTHONY MANN: The court didn't accept that (inaudible).

5 MR ISAACS: (inaudible).

6 SIR ANTHONY MANN: The greater problem in relation to the
 7 scheme (inaudible).

8 MR ISAACS: Yes, and there's a co-ordination problem, in
 9 other words, you have 125,000 — 175,000 creditors out
 10 (inaudible) for potentially 4.2 million.

11 SIR ANTHONY MANN: (inaudible).

12 MR ISAACS: Yes.

13 SIR ANTHONY MANN: The appointment of this particular
 14 (inaudible) doesn't deal with that point (inaudible)
 15 basically (inaudible).

16 MR ISAACS: Yes. What he does do, and it is an important
 17 distinction in the scheme, is that he does provide
 18 independent advice to scheme creditors (inaudible).

19 SIR ANTHONY MANN: I was going to ask you about that.

20 MR ISAACS: Yes.

21 SIR ANTHONY MANN: Look at the terms of reference. They
 22 really turn almost exclusively on assessing the quality
 23 of the information — the quality of the presentation of
 24 the information that people were getting. True it is
 25 that he was to comment on any fairness issue which

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1 occurred to him —
 2 MR ISAACS: Yes.
 3 SIR ANTHONY MANN: — and true it is he was to answer any
 4 questions about (inaudible)(inaudible) investigate
 5 (inaudible) I want to ask you this: McCarthy Denning
 6 were instructed. Were they instructed to deal with any
 7 questions, including questions of (inaudible), to give
 8 legal advice to any customers that might (inaudible)
 9 it's not clear to me exactly —
 10 MR ISAACS: Yes, they were. If your Lordship looks at some
 11 of the questions in the evidence, there's some fairly
 12 wide-ranging questions. There are some questions, for
 13 example, your Lordship might have seen about possible
 14 criminal proceedings and whether (inaudible). So that's
 15 a distinction from the (inaudible).
 16 SIR ANTHONY MANN: So at least resources were available
 17 (inaudible) too late to do any negotiation.
 18 MR ISAACS: Well, subject to my point, my Lord, which
 19 I would submit is a good one, which is what does the
 20 negotiation look like? Well, we would like more,
 21 please.
 22 SIR ANTHONY MANN: Well, and there would be negotiation
 23 because (inaudible) motivated to do it on the basis of
 24 (inaudible) reputation and with an eye on the
 25 regulators.

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1 MR ISAACS: Yes.
 2 SIR ANTHONY MANN: And (inaudible).
 3 MR ISAACS: Yes.
 4 SIR ANTHONY MANN: So, there is certainly (inaudible) —
 5 MR ISAACS: Yes.
 6 SIR ANTHONY MANN: — well-crafted negotiation and I would
 7 have thought particularly if the FCA jumped in, which
 8 (inaudible) might have been able to squeeze Provident if
 9 there were any squeezing to be done on any profits.
 10 I think one can — well, on one view it would be thought
 11 that people involved in (inaudible)(inaudible) are
 12 interest rates (inaudible) I'm not casting any
 13 aspersions (inaudible) might not ultimately be their
 14 best offer if they (inaudible) it might be taken that
 15 they're not obliged to be generous (inaudible) generous.
 16 If they want to save their reputation they should pay a
 17 bit more (inaudible), they should pay a bit more. There
 18 were some negotiations which could be (inaudible) even
 19 if Provident say, "If you don't do this, you get
 20 nothing"; is that right?
 21 MR ISAACS: I accept that's substantially right. But I also
 22 would submit your Lordship has seen the evidence in
 23 relation to the (inaudible) the directors have explained
 24 why they don't consider that any greater (inaudible)
 25 consistent with their fiduciary duties.

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1 SIR ANTHONY MANN: I have seen that.
 2 MR ISAACS: They have also spoken to shareholders and the
 3 shareholders have told them in no uncertain terms that
 4 they (inaudible).
 5 SIR ANTHONY MANN: They would say that, wouldn't they?
 6 MR ISAACS: They might well say that because it is true.
 7 SIR ANTHONY MANN: But they would say (inaudible) it depends
 8 how the questions are put.
 9 MR ISAACS: Your Lordship has also seen the evidence in
 10 relation to the PRA (inaudible)(inaudible) £1.2 million.
 11 The other — has your Lordship seen the (inaudible)
 12 that the value of what they are getting (inaudible)
 13 zero. Now, of course, they are doing it in which, as
 14 your Lordship said, they must be getting something out
 15 of it (inaudible) reputation matters, which is true, but
 16 it is highly relevant that the business is closing down
 17 (inaudible) financial pecuniary (inaudible) zero.
 18 SIR ANTHONY MANN: This is a point made by the FCA in their
 19 curious letter of non-objection.
 20 MR ISAACS: It is clearly not a letter of objection,
 21 my Lord, because it says, "We do not object", so,
 22 whatever it is, it is not a letter of objection.
 23 SIR ANTHONY MANN: It is. It is a very curious phrase. It
 24 is not a letter of non-objection.
 25 MR ISAACS: Yes.

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1 SIR ANTHONY MANN: (inaudible). Anyway, that point will be
 2 a matter for you, but they do take the point that
 3 (inaudible) negotiate some. I'm just wondering whether
 4 (inaudible) we don't know what the (inaudible) and all
 5 that is true. But, as I understand what I read from the
 6 evidence and what you have told me, the FCA was involved
 7 at an early stage and if the FCA had thought that this
 8 was (inaudible) or there was more room for squeezing
 9 more out, that is a point that the FCA could have made.
 10 MR ISAACS: Yes.
 11 SIR ANTHONY MANN: As I understand it, one wouldn't expect
 12 them to negotiate (inaudible) but if there were serious
 13 misgivings on that front at an early stage, then one
 14 would have thought that the FCA with its consumer
 15 protection hat might have said something (inaudible).
 16 Is that a fair observation?
 17 MR ISAACS: With respect, my Lord, it is not (inaudible)
 18 fair but it's evidenced by what happened in Amigo?
 19 SIR ANTHONY MANN: Well, the fact of Amigo were different.
 20 MR ISAACS: Yes, they were, but it shows that the FCA are
 21 able to take the view that they are actually going to
 22 oppose (inaudible) a scheme. They are not satisfied
 23 with what is being offered.
 24 SIR ANTHONY MANN: Yes, I'm not (inaudible) they obviously
 25 can oppose and they did oppose.

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1 MR ISAACS: On the basis that they weren't satisfied with
 2 what was being offered. In other words, they weren't
 3 satisfied that Amigo were giving enough up. Now, that's
 4 very different from the scheme and they haven't been --
 5 they haven't taken that view. That speaks volumes, in
 6 my respectful submission.
 7 SIR ANTHONY MANN: Yes. Thank you. That's helpful.
 8 MR ISAACS: I was proposing to come on to the FCA now, my
 9 Lord, so that point I've already dealt with (inaudible).
 10 The first point is that after the judgment was
 11 handed down in the Amigo case, the company made changes
 12 to the scheme and issued the supplementary explanatory
 13 statement. I've already taken your Lordship to what was
 14 in that supplementary statement. I've also taken your
 15 Lordship to the turnover provision, which makes good the
 16 point that if there is anything in it (inaudible).
 17 SIR ANTHONY MANN: Maximum 4 million--odd (inaudible).
 18 MR ISAACS: Yes, that's right, my Lord.
 19 So can we then please go to the letter of the FCA
 20 because your Lordship has mentioned it a few times and
 21 I think it is important to deal with it.
 22 SIR ANTHONY MANN: I want to know point--by--point what your
 23 response is.
 24 MR ISAACS: It is (inaudible) my Lord, at page 964.
 25 So, my Lord, picking up the point that I've already

1 made -- well, let's start with paragraph 1.3 actually.
 2 The FCA has assessed the scheme by reference to its
 3 statutory objectives and it has concluded that it is
 4 inconsistent with the rules, principles and objectives.
 5 Therefore, it doesn't support. So that is the reason it
 6 doesn't support.
 7 SIR ANTHONY MANN: Does it ever support?
 8 MR ISAACS: Not in my experience. It has never supported.
 9 SIR ANTHONY MANN: Nor is its job necessarily to support.
 10 I suppose in a very good case (inaudible) one wouldn't
 11 expect them to support.
 12 MR ISAACS: I've never seen it go beyond (inaudible), even
 13 when, as sometimes happens, they are fully behind the
 14 scheme and actually the scheme is happening because they
 15 are saying you need a scheme. There may be cases
 16 I don't know about, but I've done a lot of these and
 17 that's my experience.
 18 But the significant point is paragraph 1.4:
 19 "... the FCA has decided not to appear in Court to
 20 oppose ... as a matter of company law. The FCA's
 21 assessment of Scheme against its statutory objective is
 22 a distinct, and necessarily broader, assessment than
 23 whether the Court [sanctioned] the Scheme as a matter of
 24 company law. The FCA's decision not to oppose ... is
 25 based on two key factors."

1 Number 1:
 2 "The Lenders face an imminent insolvency in which
 3 many Redress Creditors would receive less than under the
 4 scheme: the Group has provided evidence to Redress
 5 Creditors ... [that] the Lenders would be cash flow
 6 insolvent if the Scheme does not proceed and that, in
 7 insolvency proceedings, many customers are expected to
 8 receive less (if any) benefit in respect of their
 9 redress claims than they would under the Scheme.
 10 Therefore, FCA considers on the evidence presented by
 11 the Group that approval will result in a better outcome
 12 for many consumers for many consumers than most likely
 13 alternative of an imminent insolvency."
 14 Number 2:
 15 "The Lenders are not continuing their business and
 16 there appears to be no unfair benefit to the Group and
 17 its stakeholders at the expense of Redress Creditors:
 18 The company announced fundamental changes to the Scheme
 19 during May 2021, shortly after the FCA made arguments at
 20 the convening hearing that the Scheme was not
 21 sufficiently fair to be approved by the Court. In
 22 particular, among other changes, PPC would not be
 23 continuing its business and therefore the Group and its
 24 stakeholders would not be retaining a valuable stake in
 25 a continuing property business at the expense of the

1 Redress Creditors."
 2 Nevertheless, as appears in paragraph 1.6 and 3.1,
 3 the FCA expresses significant concerns in general about
 4 these schemes by firms to avoid paying customers redress
 5 claims in full and it says it has serious concerns
 6 regarding the scheme.
 7 It's important to point out to that none of these
 8 concerns are suggested to (inaudible) sanction.
 9 SIR ANTHONY MANN: (inaudible) understand why these
 10 (inaudible) SPV but they expressly ask (inaudible).
 11 MR ISAACS: Your Lordship has extensive experience of the
 12 way that the FCA deals with these schemes and --
 13 SIR ANTHONY MANN: Not this type of scheme. (inaudible).
 14 MR ISAACS: Yes, my Lord, but the FCA has clearly spent
 15 a lot of time and money on this letter and this scheme.
 16 SIR ANTHONY MANN: Quite right too.
 17 MR ISAACS: That's not a criticism, but the FCA wants
 18 your Lordship to be appraised of its position, which is
 19 set out in this letter.
 20 SIR ANTHONY MANN: (inaudible).
 21 MR ISAACS: Well, your Lordship has just said to me that
 22 your Lordship wants me to go through every one of these
 23 points.
 24 SIR ANTHONY MANN: Sorry, that's not a complaint directed at
 25 you.

1 MR ISAACS: No, but that's what they have done. That's what
 2 they want to be done. That's really down to them
 3 (inaudible).
 4 SIR ANTHONY MANN: Well, it's right that you should draw it
 5 to my attention because (inaudible) ---
 6 MR ISAACS: Yes, indeed.
 7 SIR ANTHONY MANN: --- which I assume you have done and
 8 I know that you would do it anyway, and the point being
 9 there (inaudible) I don't really have the FCA's --- any
 10 help from the FCA (inaudible) let's ---
 11 MR ISAACS: I would say this, my Lord, it is very, in my
 12 respectful submission, unsatisfactory for the FCA to
 13 say, "We do not oppose the scheme, these are not points
 14 we're raising (inaudible)"; in other words, the points
 15 before your Lordship today, nonetheless, here are
 16 a dozen or more detailed points which I now have to deal
 17 with, and I will deal with them, and, you know, I will
 18 submit to your Lordship exactly what the FCA say, which
 19 is, when all said and done, they don't actually amount
 20 to a row of beans so far as fairness is concerned.
 21 My Lord, I propose to go through all of them but not
 22 thematically because I've grouped them (inaudible).
 23 SIR ANTHONY MANN: It would help me if (inaudible) can we
 24 deal with them sequentially. I know that a couple of
 25 them are clearly related (inaudible).

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1 MR ISAACS: Okay. We can do that, my Lord. Would you mind
 2 if I just set out how I'm proposing to deal with them
 3 and then I'll go through them sequentially just so you
 4 understand what I'm going to say.
 5 What I'm going to say is that a number of the points
 6 are of a similar nature and are, for that reason, not
 7 relevant to the exercise of the court's discretion. For
 8 example, the fact that the group is subject to ongoing
 9 reinforcement, which is the (inaudible), concerns about
 10 (inaudible) which is (inaudible), and the point about
 11 quantification (inaudible) methodology, which was ---
 12 SIR ANTHONY MANN: What are these examples of?
 13 MR ISAACS: These are points which are --- they've got
 14 nothing to do with the scheme. They're points about
 15 their regulatory obligations and duties, and they put
 16 them in this letter but they just mix them up with all
 17 the other points about the scheme. The fact that the
 18 group is subject to ongoing enforcement really has
 19 nothing to do with anything, so far as concerns today.
 20 It is just one of a thousand background facts. They
 21 don't attempt to explain why that's relevant to
 22 anything, because it isn't.
 23 The phoenixing point, I mean, they express here
 24 their real concern about phoenixing. That is a concern,
 25 there's clearly and rightly so but it has nothing to do

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1 with this scheme.
 2 SIR ANTHONY MANN: Well, it could if (inaudible) it could
 3 have something (inaudible) but the FCA would have to
 4 turn up and argue it.
 5 MR ISAACS: Absolutely, my Lord. But that's the whole
 6 point, it's a world of difference. And if the FCA is
 7 now going to require your Lordship and counsel to go
 8 through all the points that could be relevant to the
 9 sanction if the facts were different, then we would be
 10 here for ever. So, you know, they have accepted there's
 11 no phoenixing so why are they telling your Lordship that
 12 this is something that they are very concerned about in
 13 this context?
 14 Then they ---
 15 SIR ANTHONY MANN: Let's just go through (inaudible) you can
 16 say --- on some of them you will say, "The same point as
 17 the last point".
 18 MR ISAACS: Okay, my Lord. Could contribute more to paying
 19 redress creditors.
 20 SIR ANTHONY MANN: (a) first.
 21 MR ISAACS: Sorry, (a).
 22 SIR ANTHONY MANN: (inaudible) your answer to that is
 23 (inaudible).
 24 MR ISAACS: (b) could pay more. Well, I've just --- I mean,
 25 we went through that moments ago. The group's

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1 withdrawal of its commitment to financial support of
 2 PPC. That's an example of a point which is, "What's
 3 your point, FCA?" I mean, they are --- the evidence is
 4 that the commitment is going to be withdrawn not that
 5 they are going to continue indefinitely. Why is the
 6 point made? It is irrelevant.
 7 Ongoing FCA enforcements action. I've addressed
 8 that.
 9 Lack of consistency of treatment with other
 10 unsecured creditors. I'm not sure I've addressed that
 11 one yet.
 12 SIR ANTHONY MANN: This is interest on ---
 13 MR ISAACS: (inaudible).
 14 SIR ANTHONY MANN: (inaudible). Is the answer to that that
 15 all intercompany loans (inaudible) subordinated?
 16 MR ISAACS: Yes. This is the one --- your Lordship
 17 (inaudible)(inaudible) this one of them. The reference
 18 for your Lordship's note is Mr Kapur's second witness
 19 statement at paragraph 74.
 20 SIR ANTHONY MANN: Where is it?
 21 MR ISAACS: Mr Kapur's second. It is the long one that
 22 I started with. I can't remember if I read this
 23 paragraph, maybe I didn't.
 24 SIR ANTHONY MANN: (inaudible).
 25 MR ISAACS: It is sanctioned under E1, page 55.

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1 SIR ANTHONY MANN: Which paragraph?
 2 MR ISAACS: 74.
 3 SIR ANTHONY MANN: Let's look at precisely what is said.
 4 This is potentially a point (inaudible).
 5 MR ISAACS: Well, it is wrong in law as well, my Lord, but
 6 I can address your Lordship on that as well. 55:
 7 " ... with effect from the Effective Date:
 8 "PFHL (and the rest of the Group) will treat amounts
 9 outstanding under the ... Intercompany Loan Agreement as
 10 junior to ... [the other] creditors.
 11 "no interest will be charged ... to the extent that
 12 PPC incurs indebtedness, the Group company ..."
 13 Won't charge interest to any amounts.
 14 Does your Lordship have that?
 15 SIR ANTHONY MANN: I do, I have read it. To be fair to the
 16 FCA, this comes after the date of the FCA letter.
 17 MR ISAACS: (inaudible) yes, my understanding is it is not
 18 in the evidence that interest wasn't being paid
 19 beforehand.
 20 SIR ANTHONY MANN: (inaudible) FCA there's a question of
 21 priority for (inaudible) intercompany debts (inaudible)
 22 I assume that it says this is here because it is not
 23 written down anywhere else (inaudible).
 24 MR ISAACS: That's correct, yes.
 25 SIR ANTHONY MANN: But I'm asked to (inaudible) FCA are

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1 asked (inaudible).
 2 MR ISAACS: Yes.
 3 SIR ANTHONY MANN: So, although this is wrong, it was
 4 potentially right at the time.
 5 MR ISAACS: Potentially. Potentially. But, I mean, I say
 6 that, my Lord, because there's other material that's
 7 before your Lordship and if we can just go to that. It
 8 is D9, so that will probably be in the third bundle.
 9 SIR ANTHONY MANN: The page number is quicker.
 10 MR ISAACS: 1099.
 11 SIR ANTHONY MANN: (inaudible).
 12 MR ISAACS: 1099. Sorry, my Lord, 1066. It is the
 13 supplementary explanatory statement. Does your Lordship
 14 have that?
 15 SIR ANTHONY MANN: Not yet.
 16 MR ISAACS: It is down the bottom of the page, 1066, where
 17 other secured creditors for the lenders expected to be
 18 paid in full. It says once the scheme is effective, the
 19 creditors the expenses that would be paid in full on the
 20 following employees we're sorry to say that unavoidable
 21 a large number of staff have been made redundant.
 22 However, certain employees will need to be retained
 23 during the managed wind-down (inaudible) unless they are
 24 made redundant --
 25 SIR ANTHONY MANN: That's employees (inaudible).

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1 MR ISAACS: Yes (inaudible).
 2 SIR ANTHONY MANN: (inaudible).
 3 MR ISAACS: Yes.
 4 SIR ANTHONY MANN: (inaudible).
 5 MR ISAACS: Yes. So those are the creditors and expenses
 6 that are (inaudible). The reason I say it's wrong as
 7 a matter of law, my Lord, is I was referring to the
 8 (inaudible) line of authority with which your Lordship
 9 will be familiar, which establishes the company
 10 proposing a scheme is free to choose the creditors who
 11 will be bound by the scheme.
 12 SIR ANTHONY MANN: (inaudible) that is true, but it is --
 13 this is -- could choose (inaudible)(inaudible) could
 14 choose and the FCA's point is that actually (inaudible)
 15 this greater than (inaudible) that their point choose to
 16 do so (inaudible)(inaudible) but is that fair? That's
 17 the question.
 18 MR ISAACS: Yes. My point, my Lord, is it has chosen to pay
 19 these three groups of creditors if just shown
 20 your Lordship and it has not chosen to pay its company
 21 debts. Just in response to your point about (inaudible)
 22 this is something that came up later, I'm just pointing
 23 out that at the time they were never doing -- they said
 24 here that they were paying. They weren't proposing to
 25 pay its company debts.

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1 Going back to the letter.
 2 SIR ANTHONY MANN: This is the (inaudible) this is a set--off
 3 point --
 4 MR ISAACS: Yes.
 5 SIR ANTHONY MANN: -- which, as I understand it, this
 6 reflects the cut--off date. After a cut--off date the
 7 redress creditors lose their claims and (inaudible)
 8 set--off claim they would have an insolvency, which
 9 I assume your answer is that that is true, that's the
 10 effect of the cut--off point.
 11 MR ISAACS: Yes.
 12 SIR ANTHONY MANN: That's your answer.
 13 MR ISAACS: Yes. It's not the scheme that's doing them any
 14 disservice. It's the massive advertisement and
 15 notification, they just have to (inaudible) inevitably
 16 as a result of quantifying the amount of claims
 17 (inaudible).
 18 SIR ANTHONY MANN: Yes. I have analysed that correctly,
 19 have I, that is the point behind the (inaudible)?
 20 MR ISAACS: Yes, my Lord. I was addressing 3.12:
 21 "This concern arises in relation to customers with
 22 outstanding loan balances and valid redress claims who
 23 do not engage with the Scheme at all ..."
 24 My point is, well, they have a choice, they know
 25 about the scheme. They choose not to engage. It's the

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1 same situation (inaudible).
 2 SIR ANTHONY MANN: This is (inaudible) worse off than in an
 3 insolvency, absent the scheme, but (inaudible) scheme.
 4 MR ISAACS: Yes, my Lord.
 5 (inaudible) dates are commonplace, my Lord,
 6 (inaudible) which is authorities 13, paragraph 31,
 7 Mr Justice Hildyard (inaudible) convention.
 8 SIR ANTHONY MANN: Then at 3.14 the FCA (inaudible) transfer
 9 (inaudible). Is that actually correct? Well, sorry,
 10 that's true, if you don't reach an agreement.
 11 MR ISAACS: Yes, my Lord, but we have dealt with that point
 12 and they're right that a set-off is reserved under the
 13 scheme. They're not compromised. There's an express
 14 carve-out. As your Lordship corrected me this morning
 15 (inaudible) subject to equity (inaudible).
 16 SIR ANTHONY MANN: I think I'm right that --
 17 MR ISAACS: My Lord, we looked at that in some detail.
 18 The next one is (g), low turnout. I've already
 19 addressed your Lordship on that.
 20 Lack of negotiation, I've dealt with that.
 21 Voting on the scheme. That's the weighting,
 22 my Lord, and I've addressed that and made the point that
 23 that was the subject of consideration and indeed the
 24 point raised by the FCA at the convening hearing in
 25 front of Mr Justice (inaudible)(inaudible)

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1 Sir Alistair Norris made the ruling in the terms that he
 2 did, which effectively ordered that the voting
 3 methodology be used.
 4 There was also a section 166 point in relation to
 5 whether the voting claims methodology which was
 6 considered at the convening hearing.
 7 The company is a special purpose vehicle. I was
 8 going to come on to that as a special -- as a separate
 9 point. There's an awful lot that can be said about
 10 that. It is dealt with in very considerable detail in
 11 my skeleton. The bottom line is it has now become
 12 commonplace in the last two or three years there have
 13 been numerous cases where special purpose vehicles have
 14 been used for this purpose and they have been
 15 considered -- there has been full contested argument in
 16 two of the recent cases and it has considered to be
 17 a point which is not one which (inaudible) seem unfair.
 18 I'll pick that up when I come to it.
 19 Confirmation of the FCA position regarding other
 20 points. Yes, this is a rather elusive section, my Lord.
 21 If I can ask your Lordship to look at 3.30:
 22 "... for the reasons given above, and in particular
 23 as a result of the fundamental changes to the purpose of
 24 the Scheme announced by the group ... the FCA does not
 25 ... intend to appear ... to make any further submissions

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1 to the Court on these issue or any other issues raised
 2 at the convening hearing."
 3 When I read that, I thought, that's fine, we don't
 4 need to worry about that, but it comes many pages into
 5 a detailed letter where they make actually a lot of the
 6 same points they made at the convening hearing.
 7 I would add to that, my Lord, the next -- the last
 8 sentence at paragraph 3.31:
 9 "For the avoidance of doubt this letter does not
 10 purport to set out a complete and exhaustive list of all
 11 the FCA's remaining concerns or issues regarding the
 12 Scheme."
 13 How on earth is anyone supposed to respond to that?
 14 Paragraph 4 is phoenixing, my Lord. Again, that's
 15 a concern and, proper concern, as I said earlier, about
 16 the FCA, I quite understand that, but they have fully
 17 accepted that no suggestion of phoenixing and that's
 18 relevant in this case.
 19 So that, my Lord, I know that is rather brief, I can
 20 go into more detail, but that is the letter and I notice
 21 the time, my Lord. I have made substantial progress,
 22 my Lord. I'm now on the fourth question, which is the
 23 blot. There's no blot here. I'll deal with -- well,
 24 actually the only point that arises in relation to the
 25 blot is the deep hole, which is the point about the

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1 special (inaudible) purpose vehicle.
 2 SIR ANTHONY MANN: You say it works as a matter of law
 3 (inaudible), why not?
 4 MR ISAACS: Yes. On that one, my Lord, I don't think this
 5 as a matter of course, but your Lordship has extensive
 6 submissions in the skeleton on this with all of
 7 authorities and there's no question of (inaudible) in my
 8 submission (inaudible) sanction.
 9 SIR ANTHONY MANN: Insofar as they are good points, the
 10 points raised by the FCA (inaudible).
 11 MR ISAACS: I think, respectfully, my Lord, that will be
 12 very generous to the FCA.
 13 SIR ANTHONY MANN: (inaudible) if they're relevant at all
 14 (inaudible).
 15 MR ISAACS: Well, only -- yes, only in the sense that
 16 there's nowhere else we could possibly put them. But,
 17 I mean, they don't begin to come (inaudible). But, yes,
 18 I accept that. If they are relevant anywhere
 19 (inaudible).
 20 SIR ANTHONY MANN: Very well. In that case, we'll adjourn
 21 for lunch. I'm just wondering how long you think you
 22 will be? (inaudible).
 23 MR ISAACS: My Lord, I only have one further paragraph which
 24 is for the avoidance of doubt.
 25 SIR ANTHONY MANN: We'll come to that after lunch.

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1 Can I just ask, Mr Hinks, are you proposing to
 2 address me at length or not at all or are you simply
 3 here to deal with the questions, if any?
 4 MR HINKS: I'm in your hands, my Lord. I can address
 5 my Lord on the content of the reports that Mr Yorke has
 6 produced. I'm really here to represent him and to
 7 answer any questions the court might have about his
 8 work.
 9 SIR ANTHONY MANN: Well, at the moment -- I will have to
 10 reflect over lunch, but at the moment I think it is
 11 unlikely I will be troubling you, but I'm grateful, of
 12 course, for your skeleton argument and I'm grateful to
 13 Mr Yorke for the report that he prepared. At the
 14 moment, I have taken on board your skeleton, of course,
 15 (inaudible).
 16 Can I just ask questions of timing. The effective
 17 date of this scheme is (inaudible).
 18 MR ISAACS: When you approve it and the document is filed
 19 with the registrar.
 20 SIR ANTHONY MANN: There no subsequent date, because I need
 21 to go through the FCA's (inaudible) this afternoon.
 22 I assume there is no problem if I -- there is no
 23 practical (inaudible) commercial problem if I give
 24 judgment next week?
 25 MR ISAACS: I will take instructions, my Lord (inaudible).

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1 SIR ANTHONY MANN: Yes, but I was thinking in terms of
 2 Monday is (inaudible).
 3 MR ISAACS: (inaudible).
 4 SIR ANTHONY MANN: (inaudible) is Wednesday -- will
 5 a judgment on Wednesday (inaudible) instructions on
 6 that.
 7 MR ISAACS: Your Lordship wouldn't require anyone to attend?
 8 SIR ANTHONY MANN: I would -- I think that's probably
 9 right -- well, I suspect I would, in that I do not think
 10 I will have time, bearing in mind other commitments that
 11 I have, to (inaudible) read it out.
 12 MR ISAACS: Yes.
 13 SIR ANTHONY MANN: But if I would do that, I would expect
 14 (inaudible) I will do my best (inaudible) practicalities
 15 of such may not (inaudible).
 16 MR ISAACS: Yes, understood. (inaudible) I have plans to
 17 travel overseas tomorrow, but I have --
 18 SIR ANTHONY MANN: That's what juniors are for.
 19 MR ISAACS: Not just that, my Lord (inaudible).
 20 SIR ANTHONY MANN: Let me put it this way: I shan't in any
 21 way think it a discourtesy (inaudible).
 22 Right. Very well. In that case, 2.05.
 23 MR ISAACS: Thank you, my Lord.
 24 (1.05 pm)
 25 (The luncheon adjournment)

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1 (2.05 pm)
 2 (Proceedings delayed)
 3 (2.16 pm)
 4 SIR ANTHONY MANN: Mr Isaacs, I'm sorry to hold you all up
 5 but they are trying to work out why I can't be heard as
 6 well I should be heard. Apparently it is microphone
 7 problem (inaudible).
 8 MR HINKS: I can hear you, as I could hear you this morning,
 9 my Lord. I don't think that your voice is picked up by
 10 your microphone but rather from another microphone in
 11 the room.
 12 SIR ANTHONY MANN: That may be right but there's nothing we
 13 can do, I'm afraid. I'm going have to ask you to do the
 14 best you can but if you feel disadvantaged, you must
 15 tell me.
 16 MR HINKS: Of course.
 17 SIR ANTHONY MANN: I don't know what I can do, unless I can
 18 introduce somebody who does signing, but I will see if
 19 can do something about it so you must tell me. I don't
 20 think it is a question of my voice volume really, it is
 21 a question to microphone quality and pick up; is that
 22 right?
 23 MR HINKS: That's right.
 24 SIR ANTHONY MANN: Right. Well, there we are. We'll just
 25 have to do the best we can. Intervene, Mr Hinks, if you

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1 really are losing the plot.
 2 Mr Isaacs, where were we?
 3 MR ISAACS: My Lord, I said I had one point to completeness,
 4 for the avoidance of doubt (inaudible) but that's in
 5 a case of sanction of schemes the court customarily
 6 considers the international element --
 7 SIR ANTHONY MANN: Yes.
 8 MR ISAACS: -- and substantial effects. The point for
 9 completeness is that that is not relevant to this scheme
 10 because the company and then lenders letters and the
 11 parent had all incorporated in England and scheme
 12 creditors and customer of the lender's business in
 13 England their claims governed by English law.
 14 SIR ANTHONY MANN: Yes.
 15 MR ISAACS: Your Lordship need not be troubled by that.
 16 Then, my Lord, there are a number of points that
 17 I said I would come back to this morning and I have
 18 taken instructions over the short adjournment and I will
 19 address those, if I may.
 20 Your Lordship asked me the amount of the claims
 21 which had been assigned and I said it was in the
 22 evidence and I'll find it. It was actually in the
 23 bundles from the convening hearing, which is why
 24 I didn't have it at my fingertips. If I can take
 25 your Lordship to that at Z27.

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1 SIR ANTHONY MANN: Give me a reference. You can just give
 2 me a number, can't you?
 3 MR ISAACS: Yes, I can. It is Z27, which is the page, it is
 4 Mr Kapur's witness statement. It is paragraph 43.
 5 SIR ANTHONY MANN: Yes.
 6 MR ISAACS: If I can read it to you, my Lord.
 7 SIR ANTHONY MANN: Yes.
 8 MR ISAACS: "Between 6 April 2007 and 14 October 2020, the
 9 Lenders assigned [2.7 million—odd] loans ... to Debt
 10 Purchasers, relating to [1.7 million—odd] Borrowers."
 11 SIR ANTHONY MANN: How many borrowers?
 12 MR ISAACS: 1.7:
 13 "This represents [and really this is the key figure]
 14 13.8% of the [20 million] loans issued ... during that
 15 period."
 16 So it is a fraction under 14% of the loan book.
 17 SIR ANTHONY MANN: Fraction under — let's say 14% —
 18 MR ISAACS: Yes, 14%.
 19 SIR ANTHONY MANN: — of the loan book in the hands of the
 20 six transferees.
 21 MR ISAACS: Yes, that is correct, my Lord. I'd like to take
 22 you to the next level, if I might, and ask you to turn
 23 up Z64 because that give some more detail, which is
 24 a bundle we do have.
 25 SIR ANTHONY MANN: I have the other bundle —

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1 MR ISAACS: Sorry, when I say do have, I mean the one
 2 I spent time going through. It is Mr Kapur's witness
 3 statement. This is E1.
 4 SIR ANTHONY MANN: (inaudible).
 5 MR ISAACS: It is page 1 — page S64.
 6 SIR ANTHONY MANN: Yes.
 7 MR ISAACS: Does your Lordship see the table at the top of
 8 page 64?
 9 SIR ANTHONY MANN: I do.
 10 MR ISAACS: This is a helpful table because this is breaking
 11 up effectively the 13.8% into the (inaudible) purchasers
 12 and if we can go down the (inaudible) purchasers, the
 13 evidence I gave your Lordship this morning is that, PPL
 14 and Moorcroft had already been signed.
 15 Lowell, I told you, was going to be signed and
 16 that's the largest at 38% and I'm instructed that that
 17 has now actually been signed so during the course of
 18 this hearing it has been signed.
 19 SIR ANTHONY MANN: Yes.
 20 MR ISAACS: So that only leaves Cabot, which I'm told, and
 21 did tell you this morning, will be signed shortly.
 22 PRA Group, which is very small, 2%.
 23 So I think, as we speak, 2% plus 5% is 7%, that's
 24 13.8%, which is less than 1%. So it is a very small
 25 amount percentage-wise. (Pause)

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1 SIR ANTHONY MANN: Yes.
 2 MR ISAACS: (inaudible) pursued it's borrowers by way of
 3 CCJs and what has actually happening is, as anticipated,
 4 there's an exercise of letter—writing and monitoring the
 5 process, but also your Lordship will recall and, again,
 6 I read the evidence this morning about how the loan
 7 collection process will slowly move over to debt
 8 collection companies.
 9 SIR ANTHONY MANN: Slowly. It goes over in one hit
 10 (inaudible).
 11 MR ISAACS: Your Lordship's recollection is correct, it
 12 refers to the end of the year and then going. What I'm
 13 told is that that's correct and that applies to the
 14 loans which are in payment; in other words, up to date
 15 and being paid.
 16 SIR ANTHONY MANN: So when you say it goes over (inaudible)
 17 managed by (inaudible)?
 18 MR ISAACS: Yes, they take over. What I'm told is that in
 19 relation to the debts that are not being paid, that
 20 process has already started. It is happening now and
 21 (inaudible).
 22 SIR ANTHONY MANN: It has been transferred to the agents?
 23 MR ISAACS: For collection, yes.
 24 SIR ANTHONY MANN: So they would be writing letters
 25 (inaudible).

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1 MR ISAACS: Yes, exactly.
 2 SIR ANTHONY MANN: But my question is (inaudible) so much
 3 about mechanics as to what happens — when you're
 4 collecting (inaudible) and writing to somebody whether
 5 you are doing it so irrespective of the fact that they
 6 have or may have, because within six months (inaudible)
 7 outstanding — an outstanding claim, but actually since
 8 it would take some time to deal with these claims, I
 9 can't remember if there was any estimate of how long it
 10 will take, I think it might take months, during that
 11 period as well it won't necessarily be clear how much
 12 you can pursue these people for. I was wondering what
 13 was happening there because it was all triggered by my
 14 wondering what you were spending the money on in the
 15 run-off period. On one view, you wouldn't be spending
 16 very much because you that to wait for the release
 17 scheme debtors, you would have to wait and see how (a)
 18 if they made I claim and (b) how the claim panned out
 19 (inaudible) so I was wondering what you were spending my
 20 money on. And so far as they were transferred to agents
 21 you are presumably no longer spending money on them.
 22 MR ISAACS: That sounds right, my Lord. I don't know.
 23 I can take further instructions, if your Lordship
 24 wishes. What I was told is that there is an exercise of
 25 communicating with borrowers, there are lots of them,

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1 and letters being written and queries come in and
 2 letters go out and obviously if you multiply it up the
 3 volume -- the number of lenders it becomes expensive.
 4 That was the explanation I received. I can obviously
 5 get the detail if your Lordship wishes.
 6 SIR ANTHONY MANN: Well, yes. I'm not sure -- I feel
 7 a little bit uncomfortable about understanding the story
 8 of what happens in the companies from now on, which
 9 actually is an important point of your story, because
 10 you are saying, "Well, whatever we're doing, we're not
 11 going to make money out of it and in fact it is going to
 12 cost us money", so I'm trying to work out what you are
 13 doing and what you can do in a period during which a lot
 14 of these loans are subject to some sort of set-off.
 15 MR ISAACS: I accept that, my Lord. The point I would make
 16 is if nothing has been done and so everybody is
 17 surprised money is actually being made and there is
 18 a surplus, that (inaudible) creditors (inaudible)
 19 because part of the scheme that they will benefit from
 20 that, but it's not thought on the basis that the
 21 evidence which is being reviewed by PwC and by EY there
 22 will be a surplus and indeed they have reviewed those
 23 figures.
 24 SIR ANTHONY MANN: Well, they may not have made -- asked the
 25 same sort of questions either.

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1 MR ISAACS: That's true.
 2 SIR ANTHONY MANN: But EY proceeding on the basis somebody
 3 else's assumption.
 4 MR ISAACS: Yes.
 5 SIR ANTHONY MANN: And PwC work on the basis of information
 6 given to it by the company.
 7 MR ISAACS: That's correct.
 8 SIR ANTHONY MANN: So I'm not (inaudible) probing series of
 9 questions but they may not have asked the question that
 10 I'm asking.
 11 MR ISAACS: Fair point, my Lord. I don't know what
 12 questions were asked.
 13 The other point your Lordship asked me -- this was
 14 the only other point I had -- was about issuing the
 15 judgment on -- handing down judgment on Wednesday.
 16 SIR ANTHONY MANN: Yes.
 17 MR ISAACS: Which, of course, is entirely a matter for
 18 your Lordship. The only comment that has been made to
 19 me is that if there were any way that your Lordship were
 20 able to indicate one way or another as to whether the
 21 scheme was going to be sanctioned or not, that would be
 22 appreciated, in particular having regard to the fact
 23 that the company is listed on the LLC and there is
 24 trading activity and the company would like to put out
 25 a statement after this hearing one way or other.

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1 Now, of course, if your Lordship says, "No, I want
 2 to think about it", it is entirely your Lordship's
 3 decision and I understand, but they would be very
 4 grateful to eliminate the uncertainty over Wednesday, if
 5 there is any way that that could be done.
 6 SIR ANTHONY MANN: Well, the only way that that could be done
 7 were I -- would be for me to give the answer today and
 8 say "reasons to follow", but I haven't heard Mr Hinks
 9 yet. I think it's highly unlikely I will be doing that.
 10 Anything else in the way of indication, subtle or
 11 otherwise, would be (a) inappropriate and (b) a bit
 12 unsettling for the market.
 13 MR ISAACS: Yes, indeed, my Lord. What I had in mind is the
 14 only other option realistically would be if you were
 15 able to say, "This is my decision with reasons to
 16 follow".
 17 SIR ANTHONY MANN: I think it's unlikely (inaudible).
 18 MR ISAACS: I'm grateful, my Lord. Subject to that,
 19 my Lord, I don't have any other points to make and
 20 I believe that I've answered all your Lordship's
 21 questions.
 22 SIR ANTHONY MANN: If I've remembered them as well as you,
 23 Mr Isaacs --
 24 MR ISAACS: I have a big team, my Lord.
 25 SIR ANTHONY MANN: Yes.

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1 MR ISAACS: Excuse me one moment. (Pause)
 2 (inaudible) I'm grateful to those instructing me.
 3 They have pointed out in the wind-down your Lordship has
 4 seen there's quite a lot of phased redundancy and
 5 obviously that's a substantial item of expenditure that
 6 was referred to as something that needs to be
 7 (inaudible) and also there are systems issues involved
 8 in shutting down and that's also something that needs to
 9 be dealt with.
 10 SIR ANTHONY MANN: Yes. I have a question which I need to
 11 (inaudible).
 12 (Pause)
 13 (inaudible).
 14 MR ISAACS: Between 10 and £15 million but I'll just check,
 15 if I may. We'll find a reference for your Lordship. It
 16 is about 13 million.
 17 SIR ANTHONY MANN: (inaudible) if lots of people claim that
 18 might be significant chunk of the scheme (inaudible).
 19 MR ISAACS: My Lord, for your Lordship's note, it is
 20 paragraph 85 on page (inaudible) well, my Lord,
 21 I think -- my recollection is that the claims that came
 22 in as at the meeting were in the order of 800 million or
 23 something like that. So that would make that -- it's
 24 likely to be about, one would imagine, 1%, between 1 and
 25 2%.

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1 SIR ANTHONY MANN: Certainly single figures (inaudible).
 2 MR ISAACS: Yes, yes. These are very small loans,
 3 your Lordship will have seen. So if -- yes, that's
 4 about 1.5% at the moment and it can only go down.
 5 SIR ANTHONY MANN: The (inaudible) anticipates, rightly,
 6 (inaudible) on this application. I take that view in
 7 relation to the applicant (inaudible). And pursuant to
 8 that duty of full and frank disclosure, which I know you
 9 understand, are there any matters that need to be drawn
 10 to my attention other than -- other than matters to
 11 which my attention has already been drawn in the
 12 skeleton argument all the evidence to which I've
 13 referred?
 14 MR ISAACS: Thank you, my Lord, (inaudible).
 15 SIR ANTHONY MANN: The obligation, of course, extends to
 16 your team in a case like this?
 17 MR ISAACS: I have discussed the implication with my team as
 18 well.
 19 SIR ANTHONY MANN: Yes, I have no further questions from
 20 you. You have answered all my questions (inaudible).
 21 MR ISAACS: I'm grateful, my Lord.
 22 SIR ANTHONY MANN: Mr Hinks, if you can still hear me?
 23 MR HINKS: I can, my Lord.
 24 SIR ANTHONY MANN: Is there anything you want to say?
 25 I have read your skeleton argument. I think you

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1 presented yourself as being available to answer
 2 questions of behalf of your client. I don't know
 3 (inaudible) yes, he is. Is that what you see your role
 4 as being or do you wish to make some further oral
 5 submissions?
 6 MR HINKS: I see my role as very much being to assist
 7 your Lordship.
 8 SIR ANTHONY MANN: (inaudible) Mr Hinks, I don't know
 9 whether you've done that yourself or whether we have
 10 done it.
 11 MR HINKS: Can I be heard now? I see my role, my Lord, as
 12 being to --
 13 SIR ANTHONY MANN: Just a moment, Mr Hinks. We still can't
 14 hear you. Try again, Mr Hinks.
 15 MR HINKS: Can I be heard?
 16 SIR ANTHONY MANN: No.
 17 MR HINKS: Can I be heard now? Does that make any
 18 difference? (Pause)
 19 Can I be heard now, my Lord?
 20 SIR ANTHONY MANN: Just a minute. Try again.
 21 MR HINKS: Can I be heard now?
 22 SIR ANTHONY MANN: Yes. Someone had turned you down. Good.
 23 MR HINKS: I hope it wasn't on purpose!
 24 I see my role very much as being to assist
 25 your Lordship in understanding the work that Mr Yorke

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1 has done. So I have no submissions as such to make to
 2 my Lord.
 3 SIR ANTHONY MANN: Yes. Perhaps you can just help me with
 4 this, Mr Hinks: looking at the terms of reference, they
 5 are mainly to consider the nature, effect and
 6 effectiveness of the communications in getting over
 7 messages which need to be got over. Have I understood
 8 that correctly?
 9 MR HINKS: That is a large part of the engagement of
 10 Mr Yorke. That's right, my Lord.
 11 SIR ANTHONY MANN: And so far as the fairness of the scheme
 12 is concerned -- are you hearing me alright?
 13 MR HINKS: I am.
 14 SIR ANTHONY MANN: Good. So far as the fairness of the
 15 scheme is concerned, he was to express any views about
 16 fairness which struck when he looked at the information
 17 that he had and the documentation he had; is that
 18 correct?
 19 MR HINKS: Not exclusively the documentation but also the
 20 communications that he had reviewed from scheme
 21 creditors.
 22 SIR ANTHONY MANN: The stuff coming back?
 23 MR HINKS: Correct.
 24 SIR ANTHONY MANN: Right. (Pause)
 25 Yes, and then it was also to answer any questions

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1 about fairness that anybody might have had?
 2 MR HINKS: That's right, or indeed as to the scheme
 3 generally.
 4 SIR ANTHONY MANN: Yes, that's what I meant. So it was no
 5 part of his role to consider independently the fairness
 6 of the scheme as a whole, that was not his prime role,
 7 so far as the customers were concerned?
 8 MR HINKS: That is fair to say, my Lord.
 9 SIR ANTHONY MANN: Right. Good. Thank you. Well, I just
 10 wanted to confirm I'd understood his role correctly and
 11 I have read his two or three reports. Plainly the last
 12 one actually.
 13 Well, I don't think I have any questions for you,
 14 Mr Hinks. Thank you for attending. If you have nothing
 15 else to say, that you may metaphorically sit down.
 16 MR HINKS: I will. Thank you, my Lord.
 17 SIR ANTHONY MANN: Thank you, Mr Hinks.
 18 Then, Mr Isaacs, that's the end of the hearing, as
 19 I understand it. Nothing else, is there?
 20 MR SMITH: No, my Lord.
 21 SIR ANTHONY MANN: I'm not going to give an answer
 22 (inaudible) I propose to -- at the moment my intention
 23 is to give judgment on Wednesday. I shall try and hand
 24 it down remotely, if I can, so as not to require
 25 attendance, in which case it should be sent to

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1 Mr Perkins, is that the first --
 2 MR ISAACS: And Mr Goodison.
 3 SIR ANTHONY MANN: In that case, I will get my clerk -- my
 4 acting clerk to send it to them and, of course, to
 5 Mr Hinks and perhaps Mr Yorke directly, if I remember.
 6 I will do -- I've been thinking about how I can do that.
 7 I will do that, if I can. If I can't -- if I can
 8 actually produce a judgment before Wednesday in that
 9 form, I shall do so. There's a chance I will be able
 10 to. Not very great(inaudible) but there's a chance.
 11 If I can't actually produce something which is
 12 appropriately presentable for Wednesday, I'm afraid
 13 I will have to be (inaudible) -- I will also send it to
 14 the FCA actually and (inaudible). Could you make sure
 15 that my clerk, Mrs Woolly, has an email address to send
 16 it to. I will extend the courtesy of the judgment to
 17 the FCA.
 18 Those same people will be notified if I'm going to
 19 give an oral judgment on Wednesday, but I will try and
 20 avoid it.
 21 MR ISAACS: I'm grateful. I was turning, my Lord,
 22 apologies, because those instructing me were asking in
 23 terms of the announcement that will be posted today,
 24 they would like to give an indication, insofar as they
 25 are able, as to when judgment will be handed down. Is

1 MR ISAACS: Thank you, my Lord.
 2 SIR ANTHONY MANN: I will definitely take time to consider
 3 my judgment.
 4 (2.42 pm)
 5 (The court concluded)
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1 it acceptable to say it is anticipated that it will be
 2 delivered on Wednesday?
 3 SIR ANTHONY MANN: Yes. That would be an appropriate
 4 anticipation. In the unlikely event I can get it out
 5 earlier, will that mess things up in terms of markets or
 6 anything like that?
 7 MR ISAACS: No, my Lord, because, if anything, that will
 8 reduce the period of time in which there's trading on
 9 (inaudible).
 10 SIR ANTHONY MANN: But I am just concerned that if it
 11 appeared out of the blue on various people's desks
 12 (inaudible). What I may do -- I don't want to get
 13 elaborate about this, but if I believe I'm going to be
 14 able to hand it down earlier, I will give advance
 15 notification when that will be done and then you can
 16 expect to receive it at the time (inaudible).
 17 MR ISAACS: That will be extremely helpful. Thank you.
 18 SIR ANTHONY MANN: I think at the moment you should assume
 19 it will come to you at 10.30 on Wednesday morning --
 20 MR ISAACS: I'm grateful.
 21 SIR ANTHONY MANN: -- in some form or other.
 22 MR ISAACS: Yes. Thank you.
 23 SIR ANTHONY MANN: Well, thank you for your help, Mr Isaacs.
 24 Thank you for your skeleton argument. It was very
 25 helpful.

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